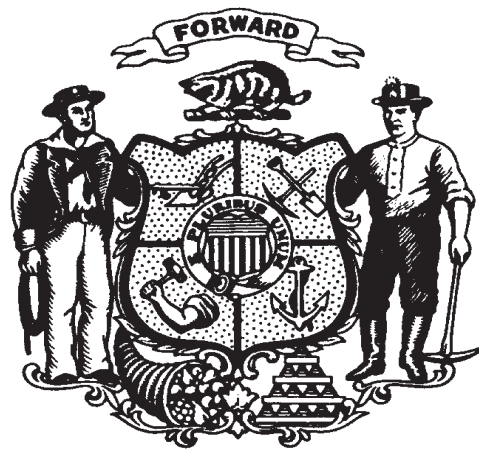


# Wisconsin Administrative Register

No. 705



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Direct questions to Bruce Hoesly (608) 266-7590, [bruce.hoesly@legis.wi.gov](mailto:bruce.hoesly@legis.wi.gov).

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## Table of Contents

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**Emergency Rules Now in Effect.****Pages 5 to 11**

## Agriculture, Trade and Consumer Protection:

Amends chapter ATPC 127, subchapter V (Title) and section 127.82 (2); to repeal sections ATPC 127.81 (3) (c), (d), (e) and (Note) and 127.82 (3), (4), (5), (6), and (7); to repeal and recreate sections ATPC 127.80 (5), 127.81 (2) (j), 127.82 (Title) and (1) and 127.82 (8); and to create section ATPC 127.80 (6r), relating to telephone solicitations and the state do–not–call registry. **EmR1413**

## Children and Families:

***Safety and Permanence, Chs. DCF 35—59***

Renumsers sections DCF 50.06 (2), 57.515 (1), and 58.04 (4) (a) and (b); renumsers and amends section DCF 57.515; amends sections DCF 50.06 (3) (b)1., 52.02 (2) (a) and (note), 52.03 (23), 52.12 (8) (b) and (9) (c) (intro.) and 1., 52.21 (3) (d) 2. a. and (9), 52.22 (1) (d), 52.41 (1) (a) 3., 52.48 (1) (b), 52.56 (24) (a), 52.58 (4) (b) 1. and 2., 52.61 (7) (a) 2. c. to e., 52.62 (4) (b) 4., and (7) (a) (intro.) and 2. to 5., 55.10 (4) (a) (intro.), 1., and 2. a., 56.03 (12), (13), (34p), and (38), 57.02 (2) and (note), 57.05 (1) (c) (note), 57.13 (1) (j), 57.14 (2) and (4) (a) 1., 57.16 (4), 57.17 (2) (h), 57.23 (2) (a) (intro.), 57.25 (6) (b) and (c), 57.33 (2), 57.38 (2), and 58.03 (12) and (15); repeals and recreates sections DCF 52.03 (22), 52.21 (3) (d) (title), 1., and 2.c., 52.62 (4) (b) 5., 54.01 (4) (b), 56.03 (5), 57.04 (6) and (34), 57.19 (6), 58.03 (3), and 58.04 (4) (title); and creates Chapter DCF 21 and sections DCF 50.06 (2) (a) (title) and 11., (2) (b), and (3) (b) 1. c., 52.03 (27m), 52.21 (3) (d) (note), 52.62 (4) (d) and (note), 55.10 (4) (a) 3. and (am), 56.04 (39), 56.09 (1m) (cm), 57.14 (2) (c), 57.23 (2) (a) 13., 57.515 (2) and (note), 58.03 (20), and 58.04 (4) (b), relating to the extension of out–of–home care to children and youth 18 years of age or over, but under 21 years of age, and affecting small businesses. **EmR1414**

## Health Services:

***Health, Chs. DHS 110—***

Renumsers and amends section DHS 115.05 (3), amends sections 115.01, 115.02, and 115.04 (intro.), and creates section 115.04 (15) and (16), relating to screening newborns for congenital and metabolic disorders. **EmR1410**

## Insurance:

Amends section Ins 17.01 (3) and repeals and recreates section Ins 17.28 (6), relating to the Injured Patients and Families Compensation Fund Annual Fund and mediation penal fees, for the fiscal year beginning July 1, 2014 and affecting small business. **EmR1408**

## Natural Resources:

***Fish, Game, etc., Chs. NR 1—***

Revises Chapters NR 10, 12, and 19, relating to the wolf hunting and trapping season and regulations and a depredation program. **EmR1210**

***Fish, Game, etc., Chs. NR 1—***

Repeals and recreates section NR 10.01 (3) (h) 1., relating to the coyote hunting season. **EmR1215**

***Fish, Game, etc., Chs. NR 1—***

Creates Chapter NR 85, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters. **EmR1320**

***Fish, Game, etc., Chs. NR 1—***

Revise Chapter NR 10, relating deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report. **EmR1405**

***Fish, Game, etc., Chs. NR 1—***

Revises sections NR 20.36 and 23.055, relating to modifications in daily bag limits and minimum size limits in response to tribal harvest. **EmR1409**

***Fish, Game, etc., Chs. NR 1—***

Creates sections NR 10.02 (11), 16.12 (3) (b) 12., 19.275 (4) (bm), 21.13 (4) (bm), and 22.13 (4) (bm), relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits. **EmR1412**

***Fish, Game, etc., Chs. NR 1—***

Revises Chapter NR 150, relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act. *[First Appearance]* **EmR1417**

***Environmental Protection — General, Chs. NR 100—***

Amends sections NR 10.01 (b) and 10.06 (5) and creates sections NR 10.01 (1) (a) and 10.06 (5) (a), related to establishing an early duck season for teal-only and the hunting regulations for teal and mourning doves. *[First Appearance]* **EmR1418**

Public Instruction:

Creates Chapter PI 80, relating to community programs and services. **EmR1411**

Safety and Professional Services:

***General Part I, Chs. 301—319***

Amends section SPS 305.40 (2) (b), (3) (b), (4) (a) 1., (b), (c), and (d) 1., and (5) and creates sections SPS Table 305.02 Row 24r, Table 305.06 Row 19r, 305.40 (1) (bm), and 305.437, relating to credentials for electricians. **EmR1415**

Transportation:

Creates section Trans 327.14, relating to motor carrier safety and affecting small businesses. **EmR1404**

Veterans Affairs:

Creates section VA 2.07, relating to grants to non-profit organizations. *[First Appearance]* **EmR1416**

Workforce Development:

***Apprenticeship, Chs. DWD 295—296***

Creates section DWD 295.25, relating to apprenticeship completion awards. **EmR1406**

**Scope Statements.**

**Page 12 to 21**

Insurance:

Revises sections Ins 2.14 and 2.15, relating to life insurance solicitation, and section 2.15, Wis. Adm. Code, relating to annuity benefit solicitation. **SS 082–14**

Revises section Ins 2.30, relating to 2012 individual annuity reserving mortality table. **SS 086–14**

## Safety and Professional Services:

***Professional Services, Chs. SPS 1—299***

Revises Chapter SPS 4, relating to credential renewal or reinstatement. **SS 087–14**

Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:

Revises Chapters A–E 1, 2, 6, 7, 8, and 10, relating to land surveyor professional licensure. **SS 085–14**

Safety and Professional Services — Chiropractic Examining Board:

Revises Chapter Chir 4, relating to course of study for chiropractic radiological technicians and chiropractic technicians. **SS 084–14**

Safety and Professional Services — Cosmetology Examining Board:

Revises Chapter Cos 5, relating to course of instruction. **SS 083–14**

Safety and Professional Services — Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:

Revises Chapter MPSW 1, relating to rule-making, application procedures, examination processes, and credential renewal procedures. **SS 088–14**

Safety and Professional Services — Pharmacy Examining Board:

Revises Chapters Phar 2 and 4, relating to application and examination for pharmacists. **SS 089–14**

Safety and Professional Services — Physical Therapy Examining Board:

Revises Chapters PT 1, 2, 3, 8, relating to temporary reentry licensure. **SS 081–14**

Transportation:

Revises Chapter Trans 115, relating to third party testing. **SS 090–14**

**Submittal of Proposed Rules to Legislative Council Clearinghouse.**

**Page 22**

Agriculture, Trade and Consumer Protection:

Amends Chapter ATCP 141, relating to cherry marketing order. **CR 14–051**

Public Service Commission:

Amends section PSC 135.019 (1) regarding the adoption of federal pipeline safety regulations. **CR 14–052**

Amends relevant sections of Chapters PSC 112, 118, 133, and 184 to conform with 2011 Wisconsin Act 155, and amends relevant sections of PSC 118 to conform with 2014 Wisconsin Act 300. **CR 14–053**

**Rule–Making Notices.**

**Pages 23 to 37**

Agriculture, Trade and Consumer Protection:

Amends Chapter ATCP 141, relating to cherry marketing order. **CR 14–051**

Natural Resources:

***Fish, Game, etc., Chs. NR 1—***

Revises Chapter NR 150, relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act. **EmR1417**

Public Service Commission:

Amends section PSC 135.019 (1) regarding the adoption of federal pipeline safety regulations. **CR 14–052**

Amends relevant sections of Chapters PSC 112, 118, 133, and 184 to conform with 2011 Wisconsin Act 155, and amends relevant sections of PSC 118 to conform with 2014 Wisconsin Act 300. **CR 14–053**

**Submittal of Proposed Rules to Legislature.****Page 38**

Natural Resources:

*Fish, Game, etc., Chs. NR 1—**Environmental Protection — General, Chs. NR 100—**Environmental Protection — WPDES, Chs. NR 200—**Environmental Protect. — Water Reg., Chs. NR 300—**Environmental Protect. — Air Pollution, Chs. NR 400—**Environmental Protect.—Solid Waste, Chs. NR 500—**Environmental Protect. — Investigation and Remediation, Chs. NR 700—**Environmental Protection—Water, Chs. NR 800—*

Revises amendments to regulations to comply with the ferrous mining rule affecting chapters NR 103, 123, 130, 131, 132, 135, 140, 182, 213, 214, 350, 406, 500, 502, 503, 504, 506, 507, 508, 509, 510, 512, 514, 516, 518, 520, 524, 526, 528, 538, 700, 812, and 815, Wisconsin Administrative Code, as required by Section 103 of 2013 Wisconsin Act 1.

**CR 13–057**



## Emergency Rules Now in Effect

*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

*Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.*

### Agriculture, Trade and Consumer Protection

**EmR1413** (ATCP DOCKET # 14–R–09) — The Wisconsin Department of Agriculture, Trade and Consumer Protection adopts the following emergency rule to amend chapter ATCP 127, subchapter V (Title) and section 127.82 (2); to repeal sections ATCP 127.81 (3) (c), (d), (e) and (Note) and 127.82 (3), (4), (5), (6), and (7); to repeal and recreate sections ATCP 127.80 (5), 127.81 (2) (j), 127.82 (Title) and (1) and 127.82 (8); and to create section ATCP 127.80 (6r), relating to telephone solicitations and the state do-not-call registry.

This emergency rule was approved by the Governor on July 29, 2014.

The scope for this rule, SS 049–14, was approved by the Governor on May, 14, 2014, published in register No. 701 on May 31, 2014, and approved by the Board of Agriculture, Trade and Consumer Protection on June 12, 2014.

### Finding of Emergency

(1) In Wisconsin, businesses wishing to solicit consumers by telephone must register with the department and pay an annual registration fee.

(2) A recent statutory change eliminated Wisconsin's separate no-call list and requires telephone solicitors to use the Wisconsin portion of the national do-not-call registry.

(3) The law also requires the department to create telephone solicitor registration requirements by rule that will show proof that the businesses have registered with the federal trade commission's do-not-call registry to obtain and use the Wisconsin portion of the national do-not-call registry.

(4) The statutory change takes effect August 1, 2014. However, the permanent rule-making establishing these registration requirements will not be effective until mid-2015.

(5) The department must adopt registration requirements by emergency rule by August 1, 2014 so telephone solicitors can register with the department and comply with the law before the permanent rule is completed.

(6) This temporary emergency rule is necessary to protect the welfare of businesses that wish to register as telephone solicitors in Wisconsin. Without this emergency rule, telephone solicitors would not be able to register with the department and would not be able to comply with the no-call law.

<b>Filed with LRB:</b>	<b>July 29, 2014</b>
<b>Publication Date:</b>	<b>August 1, 2014</b>
<b>Effective Dates:</b>	<b>August 1, 2014 through December 28, 2014</b>

### Children and Families

#### *Safety and Permanence, Chs. DCF 35—59*

**EmR1414** — The Wisconsin Department of Children and Families orders the renumbering of sections DCF 50.06 (2), 57.515 (1), and 58.04 (4) (a) and (b); the renumbering and amendment of section DCF 57.515; the amendment of sections DCF 50.06 (3) (b) 1., 52.02 (2) (a) and (note), 52.03 (23), 52.12 (8) (b) and (9) (c) (intro.) and 1., 52.21 (3) (d) 2. a. and (9), 52.22 (1) (d), 52.41 (1) (a) 3., 52.48 (1) (b), 52.56 (24) (a), 52.58 (4) (b) 1. and 2., 52.61 (7) (a) 2. c. to e., 52.62 (4) (b) 4., and (7) (a) (intro.) and 2. to 5., 55.10 (4) (a) (intro.), 1., and 2. a., 56.03 (12), (13), (34p), and (38), 57.02 (2) and (note), 57.05 (1) (c) (note), 57.13 (1) (j), 57.14 (2) and (4) (a) 1., 57.16 (4), 57.17 (2) (h), 57.23 (2) (a) (intro.), 57.25 (6) (b) and (c), 57.33 (2), 57.38 (2), and 58.03 (12) and (15); the repeal and recreation of sections DCF 52.03 (22), 52.21 (3) (d) (title), 1., and 2.c., 52.62 (4) (b) 5., 54.01 (4) (b), 56.03 (5), 57.04 (6) and (34), 57.19 (6), 58.03 (3), and 58.04 (4) (title); and the creation of Chapter DCF 21 and sections DCF 50.06 (2) (a) (title) and 11., (2) (b), and (3) (b) 1. c., 52.03 (27m), 52.21 (3) (d) (note), 52.62 (4) (d) and (note), 55.10 (4) (a) 3. and (am), 56.04 (39), 56.09 (1m) (cm), 57.14 (2) (c), 57.23 (2) (a) 13., 57.515 (2) and (note), 58.03 (20), and 58.04 (4) (b), relating to the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, and affecting small businesses.

This emergency rule was approved by the governor on July 25, 2014.

The statement of scope for this rule, SS 045–14, was approved by the governor on May 8, 2014, published in Register 701, on May 31, 2014, and approved by Secretary Eloise Anderson on June 20, 2014.

### Finding of Emergency

Section 118 (1) (b) of 2013 Wisconsin Act 334 allows the department to promulgate an emergency rule to implement the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, under ss. 48.366 and 938.366, Stats., as an emergency rule without a finding of emergency.

**Filed with LRB:** July 29, 2014  
**Publication Date:** August 1, 2014  
**Effective Dates:** August 1, 2014 through December 28, 2014

### Health Services

#### *Health, Chs. DHS 110—*

**EmR1410** — The Wisconsin Department of Health Services hereby adopts emergency rules to renumber and amend **section DHS 115.05 (3)**; to amend **sections 115.01, 115.02, and 115.04 (intro.)**; and to create **section 115.04 (15) and (16)**, relating to screening newborns for congenital and metabolic disorders.

This emergency rule was approved by the Governor on June 27, 2014.

The statement of scope for this rule, SS 057–14, was approved by the Governor on June 5, 2014, published in Register 702, on June 14, 2014, and approved by Secretary Rhoades on June 25, 2014.

### Finding of Emergency

The Department of Health Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

1. Section 253.13 (1), Stats., requires attending physicians and nurses licensed under s. 441.15, Stats., to cause every infant born in each hospital or maternity home, prior to the infant's discharge to be subjected to tests for congenital and metabolic disorders, as specified in rules promulgated by the department. If the infant is born elsewhere than in a hospital or maternity home, the attending physician, nurse licensed under s. 441.15, Stats., or birth attendant who attended the birth shall cause the infant, within one week of birth, to be subjected to these tests.

2. Section DHS 115.04 lists the disorders for which newborns must be tested under s. 253.13 (1), Stats.

3. Critical congenital heart disease (CCHD) is described as those congenital cardiac malformations in which surgical or catheter-based therapy is necessary within the first months of life. There are 12 lesions commonly considered as CCHD. In some circumstances, infants with CCHD may be asymptomatic and have a normal physical examination prior to routine hospital discharge or completion of home birth care. Unrecognized CCHD can result in death or disability shortly after hospital discharge.

4. Death due to unrecognized CCHD from 2002 to 2006 occurred in 1:38,397 Wisconsin births and death or re-hospitalization occurred in 1:24,684 Wisconsin births before two weeks of age. The median age at death due to unrecognized CCHD was 4.5 days.

5. Pulse oximetry, a point of care testing, is the recognized screening method for CCHD.

6. Prior to 2013 Wisconsin Act 135, adding pulse oximetry screening for CCHD to the mandatory panel was not permitted because testing for congenital and metabolic disorders under s. 235.13 (1), Stats. (2011–12), was explicitly limited to blood testing. Section 253.13 (1), Stats., as amended by 2013 Wisconsin Act 135, now allows testing for congenital and metabolic disorders using other screening methods including blood testing.

7. The Wisconsin State Laboratory of Hygiene (WSLH) tests newborns for organic acidemias (OA), a group of inherited disorders that lead to an abnormal buildup of particular acids, known as organic acids, in the body.

8. Abnormal levels of organic acids in the blood (organic acidemia), urine (organic aciduria), and tissues can be toxic and can cause serious health problems. A baby affected with an OA is usually well at birth and for the first few days of life. The usual clinical presentation is that of toxic encephalopathy and includes vomiting, poor feeding, neurologic symptoms such as seizures and abnormal tone, and lethargy progressing to coma. Outcome is improved by diagnosis and treatment in the first ten days of life.

9. Propionic acidemia and methylmalonic acidemia are two types of organic acidemias. In propionic acidemia and methylmalonic acidemia, the body is unable to process certain parts of proteins and lipids (fats) properly. In most cases, the features of propionic acidemia become apparent within a few days after birth. Propionic acidemia affects about 1 in 100,000 people in the United States. The effects of methylmalonic acidemia, which usually appear in early infancy, vary from mild to life-threatening. Without treatment, this disorder can lead to coma and death in some cases. This condition occurs in an estimated 1 in 50,000 to 100,000 people.

10. Though OA was determined to have met the criteria under s. DHS 115.06 for being added to the list of congenital and metabolic disorders for which WSLH must test the blood samples of newborns, the conditions were inadvertently omitted from the list of conditions in s. DHS 115.04 during subsequent revisions.

11. The process for promulgating permanent rules may take 24 months to complete, or longer if the department is unable to submit the permanent rules to the legislature prior to its last general business floor period in 2016.

**Filed with LRB:** June 27, 2014  
**Publication Date:** July 3, 2014  
**Effective Dates:** July 3, 2014 through November 29, 2014  
**Hearing Date:** August 15, 2014

### Insurance

**EmR1408** — The Commissioner of Insurance proposes an order to amend section Ins 17.01 (3); and to repeal and recreate section. Ins 17.28 (6), Wis. Admin. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and mediation panel fees, for the fiscal year beginning July 1, 2014 and affecting small business.

This emergency rule was approved by the Governor on June 12, 2014.

The statement of scope for this rule, SS 147–13, was approved by the Governor on November 18, 2013, published in Register No. 695, on November 30, 2013, and approved by the Commissioner on May 8, 2014.

### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate



preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes must be in place with an effective date prior to July 1, 2014 in order for the new fiscal year assessments to be issued in accordance with s. 655.27 (3), Wis. Stats. The permanent rule-making process cannot be completed prior to the effective date of the new fee schedule. The fiscal year fund fees were established by the Board of Governors at the meeting held on December 18, 2013 and the mediation panel fees established by the Board of Governors at the meeting held on March 19, 2014.

**Filed with LRB:** June 13, 2014  
**Publication Date:** June 18, 2014  
**Effective Dates:** June 18, 2014 through November 14, 2014  
**Hearing Date:** August 12, 2014

## Natural Resources (7)

### *Fish, Game, etc., Chs. NR 1–*

**1. EmR1210** (DNR # WM–09–12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25** and to create **sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07 (1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65, relating to the wolf hunting and trapping season and regulations and a depredation program.**

This emergency rule was approved by the Governor on August 10, 2010.

The statement of scope for this rule, SS 023–12, was approved by the Governor on April 12, 2012, published in Register No. 676, on April 30, 2012, and approved by the Natural Resources Board on May 23, 2012.

### Finding of Emergency

A non–statutory provision, SECTION 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

**Filed with LRB:** August 15, 2012  
**Publication Date:** August 18, 2012  
**Effective Dates:** August 18, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

**2. EmR1215** (DNR # WM–16–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **section NR 10.01 (3) (h) 1., relating to the coyote hunting season.**

This emergency rule was approved by the Governor on August 30, 2012.

The statement of scope for this rule, SS 038–12, was approved by the Governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

### Finding of Emergency

A non–statutory provision, Section 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

**Filed with LRB:** September 14, 2012  
**Publication Date:** October 1, 2012  
**Effective Dates:** October 1, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

**3. EmR1320** (DNR # FH–27–13(E)) — The Wisconsin Natural Resources Board proposes an order to create **Chapter NR 85, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.**

This rule was approved by the Governor on November 8, 2013.

The statement of scope for this emergency rule, SS 104–13, was approved by the Governor on August 12, 2013, published in Register No. 692 on September 1, 2013 (August 31, 2013), and approved by the Natural Resources Board on September 25, 2013.

### Finding of Emergency — Exemption

2013 Wisconsin Act 20, the 2013–15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**Filed with LRB:** November 14, 2013  
**Publication Date:** November 21, 2013  
**Effective Dates:** November 21, 2013 through June 30, 2016, or the date on which permanent rules take effect, whichever is sooner.  
**Hearing Date:** December 12, 2013 and December 19, 2013

**4. EmR1405** (DNR # WM–24–13(E)) — The Wisconsin Natural Resources Board proposes an order to repeal sections **NR 10.01 (3) (ed), (es) 3., and (et), 10.07 (3), 10.09 (2), 10.28 (3), and 45.09 (9), to amend sections NR 1.15 (1) (a), (b), and (c) 1., (2) (a) (intro.) and (at), and (3), 10.001 (2e), (6p), and (19e), 10.01 (3) (es) 1. and 2. and (3) (ev), 10.02 (3), 10.06 (8) (b) and (note), 10.07 (2m) (b) 1., 10.102 (1) (e) 4., 10.105 (1), (2), (4), and (7), 10.106 (intro.) and (1), 12.06 (1), (2), and (4), 12.16 (4), 13.38 (2) (b) and (Note), and 19.60 (2) (b) 1., to repeal and recreate sections NR 1.15 (2) (a) 8., 10.01 (3) (e)**

and (em), 10.104, 10.106 (2), 10.28 (1) and (2), 10.28 (4), and 10.41, and to create **Chapter NR 10 (Title.) and sections NR 10.001(1k) and (23a) and (b), 10.01 (2) (b) (Note) and (4) (dm) (Note), and Subchapter II**, relating to deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report.

This emergency rule was approved by the Governor on February 10, 2014

The statement of scope for this rule, SS 098–13, was approved by the Governor on July 23, 2013, published in Register No. 692, on August 14, 2013, and approved by the Natural Resources Board on September 25, 2013.

#### **Finding of Emergency**

A non–statutory provision, SECTION 9132 of 2013 Act 20, establishes that the department may promulgate rules to implement the 2012 final deer management report and that the department is not required to make a finding of emergency.

**Filed with LRB:** February 25, 2014  
**Publication Date:** March 7, 2014  
**Effective Dates:** March 7, 2014 through June 30, 2015

**5. EmR1409** (DNR # FH–03–14(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.36 (2) and 23.055 (2)**, relating to modifications in daily bag limits and minimum size limits in response to tribal harvest.

This emergency rule was approved by the Natural Resources Board on May 28, 2014, and by the governor on June 6, 2014.

The statement of scope for this rule was approved by the governor on February 14, 2014, published in Register No. 698 on February 28, 2014, and approved by the Natural Resources Board on March 19, 2014.

#### **Statement of Emergency**

This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off–reservation waters.

**Filed with LRB:** June 16, 2014  
**Publication Date:** June 14, 2014  
**Effective Dates:** June 14, 2014 through November 10, 2014  
**Hearing Date:** July 14, 2014 and July 16, 2014

**6. EmR1412** (DNR # ER–31–13(E)) — The Wisconsin Natural Resources Board proposes an order to create **sections NR 10.02 (11), 16.12 (3) (b) 12., 19.275 (4) (bm), 21.13 (4) (bm), and 22.13 (4) (bm)**, relating to the addition of the Blanding’s turtle to the State’s Protected Wild Animal list, possession exemptions, and turtle seasons and limits.

This emergency rule was approved by the Governor on June 25, 2014.

The statement of scope for this rule, SS 124–13, was approved by the governor on September 20, 2013, published in Register No. 694, on October 14, 2013, and approved by the Natural Resources Board on December 11, 2013.

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified to preserve the public welfare and interest in ensuring a sustainable population of Blanding’s turtles. The Blanding’s turtle is proposed for delisting from the State’s Threatened Species list per administrative rule ER–27–11, which is expected to take effect as early as December 2013. Although the Blanding’s turtle no longer meets the scientific criteria for listing, the Department feels that the population is nonetheless too vulnerable to survive the threat of harvest and collection, and believes emergency rules are needed to ensure a proper recovery before these activities are permitted.

All turtles not listed as threatened or endangered in ch. NR 27 or as otherwise specified have a 135–day open season (July 15–November 30) during which members of the public may capture and possess up to 5 individuals [s. NR 19.275 (4), 21.13 (4) and 22.13 (4)] per day. Permanent rule–making to protect Blanding’s turtles from this harvest will not go into effect until after the 2014 open season for turtles is already underway. An emergency rule is therefore necessary to prevent the harvest and possession of Blanding’s turtles during the 2014 open season until the permanent rule goes into effect.

The anticipated impact of collection and harvest to Blanding’s turtle conservation and recovery in the state necessitates putting the emergency rule into effect during the 2014 open season for turtles while the agency complies with the permanent rule–making procedures.

**Filed with LRB:** July 10, 2014  
**Publication Date:** July 13, 2014  
**Effective Dates:** July 13, 2014 through December 9, 2014  
**Hearing Date:** August 27, 2014

**7. EmR1418** (DNR # WM–11–14(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.01 (b) and 10.06 (5)** and to create **sections NR 10.01 (1) (a) and 10.06 (5) (a)**, related to establishing an early duck season for teal–only and the hunting regulations for teal and mourning doves.

The rule was adopted by the Natural Resources Board on June 25, 2014, approved by the Governor on August 27, 2014, and signed by Policy Director Michael L. Bruhn for Secretary Cathy Stepp, also on August 27, 2014.

The statement of scope for this rule, SS 020–14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

#### **Statement of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Filed with LRB:** August 28, 2014  
**Publication Date:** September 1, 2014  
**Effective Dates:** September 1, 2014 through January 28, 2015

## Natural Resources

### *Environmental Protection — General, Chs. NR 100—*

**EmR1417** (DNR # OE–10–14(E)) — The Wisconsin Natural Resources Board proposes an order to repeal **sections NR 150.10 (1m) (b) and 150.20 (3) (a) 4. and 5.**; to amend **sections NR 150.03 (1), (15) (intro.), (19), (25), and (26), 150.10 (1) and (1m) (a), (c) (intro.), and (2) (a), 150.20 (1), (1m) (j), (k), and (L), (2) (a) (intro.), 4., 10., 11., and 16., (3) (a) (intro.), and (4) (b) (intro.), and 150.35**; and to create **section NR 150.20 (1) (Note), (1m) (k) (Note), (m) to (y), and (2) (a) 20. to 27.**, relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

The emergency rule was adopted by the Natural Resources Board On August 13, 2014, approved by the Governor on August 27, 2014 and signed by Policy Director Michael L. Bruhn for Secretary Cathy Stepp, also on August 27, 2014.

The scope statement number is SS 051–14. The governor approved the scope statement on May 15, 2014, and the scope statement was published in register No. 701 on May 31, 2014.

### **Finding of Emergency**

Significant revisions to ch. NR 150 became effective on April 1, 2014. The changes proposed are needed to clarify procedures for the review and analysis of new administrative rules and other actions and policies to assure that the intent of the recent revisions to ch. NR 150 is being met and potential procedural questions do not invalidate years of work and public engagement. Additionally, the changes will clarify the intent of the April 1, 2014 revisions for procedures for WEPA compliance determinations, publication requirements, and plan approvals for various actions and policies, to prevent any misunderstandings or resulting challenge or delay regarding that intent.

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary to allow timely processing and implementation of department rule proposals, actions, and policies. Preservation of the public welfare necessitates putting the forgoing rule into effect prior to the time that it would take if the Department complied with normal rule promulgation procedures.

**Filed with LRB:** August 28, 2014  
**Publication Date:** August 31, 2014  
**Effective Dates:** August 31, 2014 through January 27, 2015  
**Hearing Date:** September 26, 2014

## Public Instruction

**EmR1411** — The State Superintendent of Public Instruction hereby creates **Chapter PI 80**, relating to community programs and services.

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11–CV–4573, the Department

of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

The scope statement for this rule, SS 043–14, was published in Register No. 701, on May 14, 2014, and approved by State Superintendent Tony Evers, on May 27, 2014.

### **Finding of Emergency**

The Department of Public Instruction finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

Unless an emergency rule is promulgated, school districts will not know which activities would be considered ineligible costs for the Community Programs and Services Fund for the 2014–15 school year. Not having this information could result in school districts unintentionally making expenditures from the Community Programs and Services Fund in 2014–15 that are deemed “ineligible costs” after the school board has made budget decisions and set a tax levy for the 2014–15 school fiscal year. Such a finding would then result in a negative adjustment to the district's revenue limit authority for the following 2015–16 school year, per s. 121.91 (4) (r), Stats., as created by 2013 Wisconsin Act 306. A district's revenue limit authority controls the amount of combined State General Aid and local property taxes revenues for a district. Thus, a district's revenue limit authority for the 2015–16 school year could be negatively impacted based on a definition of “ineligible costs” that was not in place at the time the district made its 2014–15 budget decisions and set the 2014–15 tax levy (by November 2014) for the Community Programs and Services Fund.

**Filed with LRB:** June 27, 2014  
**Publication Date:** July 1, 2014  
**Effective Dates:** July 1, 2014 through November 27, 2014  
**Hearing Date:** September 4, 2014

## Safety and Professional Services

### *General Part I, Chs. 301—319*

**EmR1415** — An order of the Department of Safety and Professional Services to amend **section SPS 305.40 (2) (b), (3) (b), (4) (a) 1., (b), (c), and (d) 1., and (5)** and to create **sections SPS Table 305.02 Row 24r, Table 305.06 Row 19r, 305.40 (1) (bm), and 305.437**, relating to credentials for electricians.

This emergency rule was approved by the Governor on July 29, 2014.

The statement of scope for this rule, SS 041–14, was approved by the Governor on April 30, 2014, published in Register No. 701 on May 14, 2014, and approved by the Department on May 27, 2014.

### **Finding of Emergency**

The Department of Safety and Professional Services finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows.

SECTION 15 of 2013 Wisconsin Act 143 exempts any electrician who was born on or before January 1, 1956, and who has at least 15 years of experience in installing, repairing, or maintaining electrical wiring, from the electrical licensure and supervision requirements in sections 101.862 (2) and (3)



of the Statutes. SECTION 15 also requires the Department to promulgate rules establishing criteria and procedures for issuing a corresponding credential to these grandfathered electricians.

Because of Act 143, the statutory requirements are now out of step with the Department's administrative rules – and the stakeholders who are affected by these statutory changes are confused by the differences. For example, there has been substantial confusion on what these grandfathered electricians can or need to do and how local governmental units should treat them. Promulgating revisions to the rules through the emergency rule process is needed in order to minimize the confusion and any hardship as soon as possible.

**Filed with LRB:** August 1, 2014  
**Publication Date:** August 6, 2014  
**Effective Dates:** August 6, 2014 through January 2, 2015  
**Hearing Date:** September 12, 2014

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### Transportation

**EmR1404** — The Wisconsin Department of Transportation proposes an order to create **section Trans 327.14**, relating to motor carrier safety and affecting small businesses.

This emergency rule was approved by the Governor on February 10, 2014.

The statement of scope for this rule, SS 155–13, was approved by the Governor on December 16, 2013, published in Register 696, on December 31, 2013, and approved by Secretary Mark Gottlieb as required by s. 227.135 (2), Stats., on January 13, 2014.

#### Finding of Emergency

The welfare of commercial motor vehicle drivers who hold a commercial driver license (“CDL”) issued by the State of Wisconsin who operate commercial motor vehicles outside this state will be harmed beginning January 30, 2014, if they cannot demonstrate compliance with recent federal regulations because they will be treated by other states as unlicensed drivers. Beginning on January 1, 2014, federal regulations require CDL holders to have certified to DOT the type of commercial driving they do and, if required, to have submitted proof of medical fitness to drive, and to have their driving records updated by DOT to show these actions, before driving a commercial motor vehicle. The Department published the scope statement for permanent rulemaking in September 2011 to implement these federal requirements. The permanent rulemaking effort is ongoing but will not take effect before the January 30, 2014 deadline for compliance.

**Filed with LRB:** February 14, 2014  
**Publication Date:** February 16, 2014  
**Effective Dates:** February 16, 2014 through July 15, 2014  
**Extension Through:** September 13, 2014

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### Veterans Affairs

**EmR1416** — The Department of Veterans Affairs hereby adopts an order to create **section VA 2.07**, relating to grants to non–profit organizations.

This emergency rule was reviewed by the Board of Veterans Affairs on July 15, 2014 and approved by the Governor on August 20, 2014.

The statement of scope for this rule, SS 038–14, was approved by the Governor on April 21, 2014, published in Register No. 701 on May 14, 2014, and approved by Secretary John A. Scocos on May 27, 2014.

#### Finding of Emergency

The Legislature by Section 9 of 2013 Act 190 provides an exemption from a finding of emergency for the adoption of this rule.

**Filed with LRB:** August 28, 2014  
**Publication Date:** August 29, 2014  
**Effective Dates:** August 29, 2014 through January 25, 2015

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### Workforce Development

#### *Apprenticeship, Chs. DWD 295–296*

**EmR1406** — The Wisconsin Department of Workforce Development hereby adopts the following emergency rule to create **section DWD 295.25**, relating to apprenticeship completion awards.

The emergency rule was approved by the governor on March 21, 2014.

The statement of scope for this emergency rule was approved by the Governor on February 13, 2014, published in Register No. 698 on February 28, 2014, and approved by the Secretary of the Department of Workforce Development on March 11, 2014.

#### Finding of Emergency

The department of workforce development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of facts constituting an emergency include:

- (1) Wisconsin currently has more than 2,100 employers participating in, and training individuals, under the apprenticeship program.
- (2) During 2013, Wisconsin had 9,723 valid apprenticeship contracts.
- (3) Over the past ten years, the completion rate of the apprenticeship program averaged between 55–60%.
- (4) 2013 Wisconsin Act 57 creates an apprenticeship completion award program to be administered by the department of workforce development to partially reimburse tuition costs incurred by an apprentice who has successfully completed part or all of the requirements of their apprenticeship contract, and is employed in the trade, occupation, or business under the apprenticeship contract, or the sponsor of the apprentice.
- (5) The department of workforce development has received general purpose revenue (GPR) funds of \$225,000 in fiscal year 2013–14 and 2014–15, to distribute up to 25%, or \$1,000, whichever is less, of the tuition costs incurred by the apprentice and sponsor of the apprentice. The amount of the first payment upon successful completion by the apprentice of the first year of the contract may not exceed \$250.

(6) The department of workforce development is adopting this emergency rule to prevent a potential hardship to Wisconsin's apprenticeship program participants. Adoption of this emergency rule will ensure those participating in an eligible apprenticeship contract may begin receiving

apprenticeship completion awards as soon as possible. Because a permanent rule cannot be adopted in time, GPR funds for fiscal year 2013–14 would be lost if the emergency rule is not adopted.

**Filed with LRB:** March 26, 2014

**Publication Date:** March 27, 2014

**Effective Dates:** March 27, 2014 through  
August 23, 2014

**Hearing Date:** May 15, 2014

**Extension Through:** October 22, 2014



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## Scope Statements

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### Insurance

SS 082–14

The statement of scope was approved by the governor on August 18, 2014.

#### Rule No.

Sections Ins 2.14 and 2.15 (revise).

#### Relating to

Life insurance solicitation, and section 2.15, Wis. Adm. Code, relating to annuity benefit solicitation.

#### Rule Type

Permanent.

#### 1. Finding / Nature of Emergency (Emergency Rule Only)

Not applicable.

#### 2. Detailed Description of the Objective of the Rule

The objective of the rule change is to update the buyer's guide that is furnished to Wisconsin consumers during the sale of annuities. Currently, the Wisconsin Buyer's Guide to Annuities is available online, and contains general product information and provides answers to basic questions about risks and investing that consumers can use to decide whether these products are right for them. Unfortunately, the Wisconsin buyer's guide is outdated as it does not provide any information about indexed annuity products which are now common in the marketplace. In 2013, the National Association of Insurance Commissioners (NAIC) revised and updated the NAIC buyer's guide to include information about fixed, indexed and variable annuities. The NAIC now offers three versions of the Buyer's Guide for Deferred Annuities: a general information guide, a fixed annuity guide, and a variable annuity guide. It is the goal of the OCI to amend s. Ins 2.15 to permit insurers and agents to use the most current version of the applicable NAIC Buyer's Guide for Deferred Annuities, rather than the Wisconsin Buyer's Guide to Annuities. As a result of this change, the outdated Wisconsin Buyer's Guide to Annuities would be discontinued. Wisconsin adopted the NAIC Life Insurance Buyer's Guide in 1998. Using the NAIC guides for both life insurance and annuities will provide uniformity and consistency for insurers, agents and consumers.

The objective of amending s. Ins 2.14 (4) (g) 1. is to bring the rule up to date with a change in the law that occurred in 1998. The entire subdivision should be deleted because the sentence stating "Further explanation of the intended use of these indexes is provided in the life insurance buyer's guide" is incorrect as no such explanation is contained in the NAIC Life Insurance Buyer's Guide concerning cost indexes. The explanation was previously included in OCI's Life Insurance Buyer's Guide which was replaced with the NAIC Buyer's Guide by rule change in January, 1998.

#### 3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background, and Justification for the Proposed Rule

Wisconsin adopted the NAIC Life Insurance Buyer's Guide in 1998, effectively replacing the Wisconsin Life Insurance Buyer's Guide. To be consistent, Wisconsin should also adopt the NAIC Buyer's Guide for Deferred Annuities, effectively replacing Wisconsin Buyer's Guide to Annuities. Using the NAIC buyer's guides for both life insurance and annuities will provide uniformity and consistency for insurers, agents and consumers.

Section Ins. 2.14 requires insurers to use the most current version of the NAIC Life Insurance Buyer's Guide. The change to s. Ins 2.14 (4) (g) 1. acknowledges that the NAIC Life Insurance Buyer's Guide does not contain an explanation of the use of cost comparison indexes. The explanation was previously included in Wisconsin's Life Insurance Buyer's Guide which was replaced with the NAIC Buyer's Guide by rule change in January, 1998. This is a minor technical change to the existing rule which does not encompass a change of existing policy with respect to the disclosure rules applicable to life insurance.

#### 4. Detailed Statutory Authority for the Rule (Including the Statutory Citation and Language)

The statutory authority for these rules are ss. 227.11 (2) (a) and 601.41 (3), Wis. Stats., which provide for the commissioner's rulemaking authority in general and specifically ss. 628.34 (12) and 628.38, Wis. Stats. Section 628.34 (12), Wis. Stats., states the commissioner "may define specific unfair trade practices by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or restrain competition unreasonably." Section 628.38, Wis. Stats., states the commissioner "may by rule require insurers to deliver to prospective buyers of life or disability insurance, at a time specified in the rule, information consistent with ss. 601.01 and 628.34, Wis. Stats., that will improve their ability to select appropriate coverage."

#### 5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule

200 hours and no other resources are necessary to develop the rule.

#### 6. List with Description of all Entities that may be Impacted by the Rule

Insurers, insurance agencies and individual agents may be impacted by the rule.

#### 7. Summary and Preliminary Comparison of any Existing Or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule

The Office is unaware of any proposed or existing federal laws or regulations that are intended to address the activities to be regulated by the proposed rule changes.

## 8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

☐ yes

☒ no

local/statewide economic impact (choose one)

☒ minimal or none (< or = \$50,000)

☐ moderate (\$50,000—\$20,000,000)

☐ significant (>\$20,000,000)

The amendment to s. Ins 2.14 (4) (g) 1. should have no impact economic impact on the insurance industry as it merely deletes an erroneous reference in the applicable rule.

The amendment to s. Ins 2.15 will have a minimal additional cost for insurers and insurance agents. OCI does not charge insurers or agents for using the Wisconsin Buyer's Guide to Annuities. However, NAIC charges \$0.35 for each copy of a buyer's guide. This has been a consistent cost for using NAIC guides.

### Contact Person

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## Insurance

SS 086–14

The statement of scope was approved by the governor on August 18, 2014.

### Rule No.

Section Ins 2.30 (revise).

### Relating to

2012 individual annuity reserving mortality table.

### Rule Type

Permanent and emergency.

### 1. Finding/Nature of Emergency

Under the current rule governing the minimum standards of valuation for individual life and pure endowment contracts life insurers are required to use the Annuity 2000 Mortality Table, which has become outdated. OCI is addressing the issue by enacting an emergency and permanent rule that would require insurers to use the 2012 Individual Annuity Reserving Mortality Table (2012 IAR Table) for contracts issued on or after January 1, 2015. Wisconsin insurers have expressed support for the proposed rule and its enactment at the earliest date possible in 2014. Insurers are requesting time in advance of January 2015 in order to modify existing policy forms and marketing material so that they are able to compete with other insurers on a level playing field. However, in order for insurers to have sufficient time to file new policy and rate forms for use beginning January 1, 2015 the rule must be in place no later than November 2014 to ensure sufficient time to submit form or rate filings with the Office. Delay beyond January 2015 will not be in the best interest of insurers or consumers.

The 2012 IAR Table provides insurers with a more accurate tool for calculating minimum reserves. This is beneficial to the both the insurers and consumers. The emergency rule will provide insurers with the earliest opportunity to use the 2012 IAR Table while the permanent rule moves through the

legislative process. In addition, the proposed permanent rule has been recommended by the National Association of Insurance Commissioners (NAIC) and is in the process of being adopted in other states. The emergency rule will help domestic insurers remain on equal footing with insurers from other states where the rule is already being adopted.

### 2. Detailed Description of the Objective of the Rule

The proposed emergency and permanent rule would require life insurers to use the 2012 IAR Table when determining the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after January 1, 2015. The proposed emergency and permanent rule would modernize an outdated table. The 2012 IAR Table is comprised of a basic experience table with margins (the 2012 Individual Annuity Mortality Period Life Table) and a projection scale. The addition of a projection scale to the 2012 IAR Table allows the Table to remain up-to-date over a longer period of time because it allows the Table to adjust by considering the most accurate statistics during each valuation year.

### 3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background, and Justification for the Proposed Rule

The existing requirements are contained primarily in s. 623.06 (2a) (b) and (4m), Wis. Stats., s. Ins 2.30 (3), and Subch. V of ch. Ins. 50, Wis. Adm. Code. These provisions establish that mortality tables are to be used by insurers to calculate minimum reserves and establish requirements related to testing and reporting of actuarial information. Current rules require insurers to use the Annuity 2000 Mortality Table as adopted by the NAIC. The proposed emergency and permanent rule will require insurers to use the 2012 IAR Table as adopted by the NAIC in December 2012 for calculating the minimum reserves on contracts written on or after January 1, 2015. The proposed rule is being considered as it has been recommended by the NAIC and is in the process of being adopted by other states. Further, not adopting the 2012 IAR Table may place domestic insurers at a competitive disadvantage compared to insurers from states where the table has been adopted.

### 4. Detailed Statutory Authority for the Rule (Including the Statutory Citation and Language)

The Commissioner has the general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Wis. Stats., and as provided under ss. 227.11 (2) (a) and 601.41 (3), Wis. Stats. Further, under ss. 623.06 (2a) (b) and (4m), Wis. Stats., the commissioner has specific authority to determine the minimum standard for the valuation of individual annuity and pure endowment contracts by establishing mortality tables to be used by insurers to calculate minimum reserves and requirements related to the testing and reporting of actuarial information.

### 5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule

60 hours and no other resources are necessary to develop the rule.

### 6. List with Description of all Entities that may be Impacted by the Rule

The proposed rule will affect insurers offering individual annuity and pure endowment contracts.

**7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

The office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

**8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

significant economic impact on small businesses?

☐ yes

☒ no

local/statewide economic impact (choose one)

☒ minimal or none (< or = \$50,000)

☐ moderate (\$50,000—\$20,000,000)

☐ significant (>\$20,000,000)

**9. Contact person**

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**Safety and Professional Services**

***Professional Services, Chs. SPS 1—299***

SS 087–14

The statement of scope was approved by the governor on August 22, 2014.

**Rule No.**

Chapter SPS 4 (revise).

**Relating to**

Credential renewal or reinstatement.

**Rule Type**

Permanent.

**1. Finding/Nature of Emergency (Emergency Rule Only)**

N/A.

**2. Detailed Description of the Objective of the Proposed Rule**

The proposed rulemaking project is intended to create a definition of credential reinstatement and clarify the process for credential renewal or reinstatement for individuals who have failed to renew within 5 years after the credential renewal date.

**3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

Current department administrative rules are silent with regards to credential reinstatement for individuals who have failed to renew within 5 years after the credential renewal date.

**4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 227.11 (2) (a), Wis. Stats. Rule-making authority is expressly conferred as follows: (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency: 1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature. 2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature. 3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Section 440.08 (3) (b), Wis. Stats. The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines are necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

**5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

50 hours.

**6. List with Description of all Entities that may be Affected by the Proposed Rule**

All Department credential holders.

**7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

None.

**8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

The Department believes that the proposed revisions will have minimal to no economic impact.

The Department believes that the proposed revisions will have minimal to no impact on small businesses.



**9. Contact Person**

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**Safety and Professional Services —  
 Examining Board of Architects, Landscape  
 Architects, Professional Engineers, Designers  
 and Land Surveyors**

SS 085–14

The statement of scope was approved by the governor on August 22, 2014.

**Rule No.**

Chapters A–E 1, 2, 6, 7, 8, and 10 (revise).

**Relating to**

Land surveyor professional licensure.

**Rule Type**

Permanent.

**1. Finding/nature of emergency (Emergency Rule only):**

NA.

**2. Detailed Description of the Objective of the Proposed Rule**

The objective of this proposed rule is to amend Wisconsin Administrative Code chs. A–E 1, 2, 6, 7, 8, and 10 in order to bring these rules into compliance with recently enacted legislation, 2013 Wisconsin Act 358.

**3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

2013 Wisconsin Act 358 significantly impacted land surveyor practice in Wisconsin. The Act was comprehensive and instituted a variety of changes throughout the statutes. This scope statement will focus on the changes made primarily to Wisconsin Administrative Code chs. A–E 1, 2, 6, 7, 8, and 10. The Act replaced the certificate of registration credential with a licensed professional land surveyor credential making land surveyors licensed professionals. Secondly, Act 358 added the terms “practice of professional land surveying” and “professional land surveyor” as statutory definitions thereby creating the necessity to update the term “land surveyor” with the term “professional land surveyor” throughout the A–E chapters. A third change prompted by the legislation includes the repeal of the temporary permit which had allowed applicants for registration who held an unexpired certificate of registration in another state to obtain a temporary permit while they were waiting to take the jurisdictional exam in Wisconsin. This provision will go into effect on August 1, 2014. Lastly, the Act also repealed the apprenticeship training course path to licensure. The repeal of the apprenticeship provision will also go into effect on August 1, 2014. The proposed rule will amend Wisconsin Administrative Code chs. A–E 1, 2, 6, 7, 8, and 10 to reflect these changes as well as any other changes necessary to resolve inconsistencies between the rules and 2013 Wisconsin Act 358.

**4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 15.08 (5) (b), Stats., “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, . . .” The proposed rule will provide guidance in the profession regarding the substantial changes made to the practice of land surveying in Wisconsin.

Section 227.11 (2) (a), Stats., discusses the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting the provisions of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. . . .” This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute. Section 227.01 (1), Stats., defines agency as a board.

Section 443.015 (2), Stats., “Each section of the examining board may promulgate rules governing the professional conduct of individuals, firms, partnerships, and corporations register, permitted, certified or granted certificate of authorization by that section.”

**5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

State employees will spend approximately 80 hours developing this proposed rule.

**6. List with Description of all Entities that may be Affected by the Proposed Rule**

The proposed rule will affect applicants for land surveyor credentials and currently registered land surveyors.

**7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

None.

**8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

It is anticipated that the proposed rule will not have a significant economic impact on small businesses.

**9. Contact Person**

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**Safety and Professional Services —  
 Chiropractic Examining Board**

SS 084–14

The statement of scope was approved by the governor on August 25, 2014.

**Rule No.**

Chapter Chir 4 (revise).

**Relating to**

Course of study for chiropractic radiological technicians and chiropractic technicians.

**Rule Type**

Permanent.

**1. Finding/Nature of Emergency (Emergency Rule Only)**

None.

**2. Detailed Description of the Objective of the Proposed Rule**

The objective of the proposed rule is to clarify the Chiropractic Examining Board's intent regarding the statutory term course of study found in ss. 446.025 (2) (a) 3. and 446.026 (2) (a) 3., Stats. This undefined term has led to inconsistent application of the statute. The proposed rule seeks to define the term in administrative code which should result in a more uniform application of the statute.

**3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

Sections 446.025 (2) (a) 3. and 446.026 (2) (a) 3., Stats., regulate the certification of chiropractic radiological technicians and chiropractic technicians. One of the requirements for certification for both chiropractic radiological technicians and chiropractic technicians is the applicant must submit evidence satisfactory to the Chiropractic Examining Board that the applicant has completed a course of study approved by the Board. Currently, the term course of study is not defined in rule or statute. This has led to ambiguity as to how applicants are to comply with the statutory requirement. The proposed rule will clarify the Board's intent in administering the statute by stating what constitutes a course of study.

**4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 15.08 (5) (b), Stats., provides that examining boards, such as the Chiropractic Examining Board, "shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, . . ." The proposed rule seeks to provide guidance to applicants seeking certification as a chiropractic radiological technician or a chiropractic technician as to what criteria meets the Board's requirement for a course of study.

Section 227.11 (2) (a), Stats., discusses the parameters of an agency's rule-making authority, stating an agency, "may promulgate rules interpreting the provisions of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. . ." This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute. Section 227.01 (1), Stats., defines agency as a board. The Chiropractic Examining Board falls within the definition of agency and is therefore allowed to apply s. 227.11 (2) (a), Stats., to statutes it administers.

**5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

State employees will spend approximately 80 hours developing this proposed rule.

**6. List with Description of all Entities that may be Affected by the Proposed Rule**

The proposed rule will affect applicants for chiropractic radiological technician and chiropractic technician certification.

**7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

None.

**8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

This rule is likely to have minimal to no economic impact on small businesses.

**9. Contact Person**

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**Safety and Professional Services —  
Cosmetology Examining Board**

SS 083-14

The statement of scope was approved by the governor on August 25, 2014.

**Rule No.**

Chapter Cos 5 (revise).

**Relating to**

Course of instruction.

**Rule Type**

Permanent and emergency.

**1. Finding/Nature of Emergency (Emergency Rule Only)**

2013 Wisconsin Act 356 amended ss. 440.62 (3) (ar) 2. and 454.06 (2) (b), Stats., by decreasing the number of training hours which must be fulfilled by cosmetology practitioners as outlined in s. Cos 5.02. Currently, cosmetology students are being enrolled in courses on a continuous basis notwithstanding the fact that the curriculum and corresponding training hours as they appear in Wis. Admin. Code s. Cos. 5.02 is no longer in effect due to Act 356. Emergency rules are needed to give clear guidance to students and instructors regarding the changes in required training hours and the corresponding syllabus for cosmetology practitioners.

**2. Detailed Description of the Objective of the Proposed Rule**

The purpose of the proposed rule is to bring current Wisconsin Administrative Code ch. Cos 5 in line with recent legislation, specifically 2013 Wisconsin Act 356.

**3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

Wis. Admin. Code s. Cos 5.01 requires cosmetology schools to develop curriculum for cosmetology practitioners that have been approved by the Cosmetology Examining Board. Wis. Admin. Code s. Cos 5.02 sets forth the current Board approved practitioner's license syllabus and the corresponding training hours for each subject. Now that the training hours have been reduced by 2013 Wisconsin Act 356, both school administrators and students need clear guidance



as to the number of training hours required for each subject. The proposed rule seeks to provide clear direction by identifying the changes in the syllabus. 2013 Wisconsin Act 356 also requires the Cosmetology Examining Board to identify approved accrediting agencies for the purpose of satisfying educational requirements.

#### **4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 15.08 (5) (b), Stats., provides examining boards, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., discusses the parameters of and agency’s rule-making authority, stating an agency, “may promulgate rule interpreting provisions of statute, but a rule is not valid if it exceeds the bounds of correct interpretation. . .” This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute.

Section 440.62 (5) (b) 1., Stats., requires the Board to establish the minimum curriculum for cosmetology schools and the minimum standards for instruction, materials and equipment at cosmetology schools.

Section 454.075, Stats., “The examining board shall identify by rule the accrediting agencies it approves to accredit schools for the purpose of satisfying educational requirements for an initial license or a license renewal under this subchapter.”

#### **5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

State employees will spend approximately 80 hours developing the proposed rule.

#### **6. List with Description of all Entities that may be Affected by the Proposed Rule**

Cosmetology school administrators, licensed cosmetology practitioners and applicants for cosmetology practitioner credentials will be affected by the proposed rule.

#### **7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

None.

#### **8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

The proposed rule is likely to have a minimal or no economic impact on small businesses.

#### **9. Contact Person**

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## **Safety and Professional Services — Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**

SS 088–14

The statement of scope was approved by the governor on August 25, 2014.

#### **Rule No.**

Chapter MPSW 1 (revise).

#### **Relating to**

Rule-making, application procedures, examination processes, and credential renewal procedures.

#### **Rule Type**

Permanent.

#### **1. Finding/Nature of emergency (Emergency Rule Only)**

N/A.

#### **2. Detailed Description of the Objective of the Proposed Rule**

The object is to update the Board’s processes and procedures by removing obsolete provisions and clarifying and streamlining provisions including the rule-making, application, examination, and renewal.

#### **3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

Currently there are procedures in the rule-making and examination procedures which are obsolete or outdated. The renewal procedures require clarification as to both renewal and reinstatement requirements. The proposed rule will update and clarify the board procedures relating to rule-making, application, examination and renewal.

#### **4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

15.08 (5) (b), Stats. Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

#### **5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

80 hours.

#### **6. List with Description of all Entities that may be Affected by the Proposed Rule**

Marriage and family therapists, professional counselors, and social workers and applicants to those professions as well as the board and department.

#### **7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

None.

**8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

None. The rule is not likely to have a significant economic impact on small businesses.

**9. Contact Person**

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(608) 261–2377

**Safety and Professional Services —  
Pharmacy Examining Board**

SS 089–14

The statement of scope was approved by the governor on August 18, 2014.

**Rule No.**

Chapters Phar 2 and 4 (revise).

**Relating to**

Application and examination for pharmacists.

**Rule Type**

Permanent.

**1. Finding/Nature of Emergency (Emergency Rule Only)**

N/A.

**2. Detailed Description of the Objective of the Proposed Rule**

The objective of the rule is to bring the rule in compliance with 2013 Wisconsin Act 114 and to update the examination requirements.

**3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

2013 Wisconsin Act 114 prohibits the board from requiring a person to complete any postsecondary education before the person is eligible to take an examination for a credential. The proposed rule will revise the application rules to allow for the examination to be taken prior to completion of the education. In addition, the proposed rule will update and clarify the examination requirements including the removal of outdated and obsolete provisions.

The alternative is to not be in compliance with the new legislation. The rule will also continue to have confusion regarding the obsolete provisions.

**4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 15.08 (5) (b), Stats. Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 450.02 (3) (d) and (e), Stats. The board may promulgate rules necessary for the administration and enforcement of this chapter and ch. 961 and establishing minimum standards for practice of pharmacy.

**5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

60 hours.

**6. List with Description of all Entities that may be Affected by the Proposed Rule**

Pharmacist applicants.

**7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

None.

**8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

No anticipated economic impact of implementing the rule and the rule is not likely to have a significant economic impact on small businesses.

**9. Contact Person**

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**Safety and Professional Services —  
Physical Therapy Examining Board**

SS 081–14

The statement of scope was approved by the governor on August 14, 2014.

**Rule No.**

Chapters PT 1, 2, 3, 8 (revise).

**Relating to**

Temporary reentry licensure.

**Rule Type**

Permanent.

**1. Finding/Nature of Emergency (Emergency Rule Only)**

None.

**2. Detailed Description of the Objective of the Proposed Rule**

The proposed rule seeks to redefine key terms found in Wis. Admin. Code chs. PT 1, 2, 3, and 8 that are vague and ambiguous and replace those terms with more specific wording that clearly illustrate the Physical Therapy Examining Board's intent with regards to license renewal and reentry to practice. The proposed rule will also amend Wis. Admin. Code ch. PT 1 to reflect a change made by the passage of 2013 Wisconsin Act 114.

**3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

The Physical Therapy Examining Board (Board) reviewed its rules and determined that certain terms, as they are currently defined in the administrative code, are ambiguous and need clarification. The Board identified the following

key terms for revision: candidate for reentry, clinical practice, and temporary reentry license. The term “candidate for reentry”, as defined in s. PT 1.02 (2), is directed towards persons who have not practiced 3 years prior to application for or renewal of their license. The proposed rule will amend the term to capture licensees who have allowed their license to lapse for 5 years or more. The proposed rule will remove the term “clinical practice” wherever it is found throughout the physical therapy chapter and replace it with the term “active practice” to clarify the Board’s intention to signify current active practice as opposed to a license that has lapsed.

The temporary reentry license found in Wis. Admin. Code ch. PT 3 will be revised to clearly identify the person targeted by the rule. This will be accomplished by including the term “candidate for reentry” in the introduction. The proposed rule will also remove a vague provision requiring candidates for reentry to prove their competence by undergoing a vocational evaluation. Similar changes will occur in Wis. Admin. Code chs. PT 2 and 8.

Lastly, the proposed rule will remove the requirement found in s. PT 1.04 that requires applicants for a physical therapy credential to submit to the board, no less than 30 days prior to the date of examination, their completed application. The completed application includes verified documentary evidence of graduation from a school of physical therapy. 2013 Wisconsin Act 114 mandates that the Department of Safety and Professional Services and its attached boards must refrain from requiring the completion of postsecondary education before the person is eligible to take an examination for any credential. By requiring the completed application include the verified documentary evidence of graduation from a school of physical therapy the Board is in fact requiring applicants to complete their postsecondary education as a condition of taking the exam. This requirement must be removed in keeping with Act 114.

#### **4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 15.08 (5) (b), Stats., provides that an examining board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.” These proposed rules will provide guidance within the physical therapy profession by clarifying unclear terms regarding license renewal and reentry to practice.

Section 227.11 (2) (a), Stats., provides that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 448.53 (2), Stats., the examining board may promulgate rules providing for various classes of temporary licenses to practice physical therapy. This proposed rule amends the temporary reentry license.

#### **5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

State employees will spend approximately 50 hours developing the proposed rule.

#### **6. List with Description of all Entities that may be Affected by the Proposed Rule**

Licensed physical therapists and physical therapist assistants renewing their license as well as in–state and out–of–state applicants seeking licensure in Wisconsin for the first time will be impacted by the proposed rule.

#### **7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

No comparable proposed or current federal regulations dealing with the subject of the proposed rules exist.

#### **8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

This rule is not likely to have a significant impact on small business.

#### **Contact Person**

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### **Transportation**

SS 090–14

The statement of scope was approved by the governor on August 18, 2014.

#### **Rule No.**

Chapter Trans 115 (revise).

#### **Relating to**

Third party testing.

#### **Rule Type**

Permanent.

#### **1. Finding/Nature of Emergency (Emergency Rule Only)**

N/A.

#### **2. Detailed Description of the Objective of the Proposed Rule**

Wisconsin Admin. Code ch. Trans 115, *Third Party Testing*, is an existing rule that establishes policies and procedures to authorize persons other than employees of the Wisconsin Department of Transportation (“WisDOT”) to conduct Commercial Driver’s License (“CDL”) skills tests, which CDL applicants are required to take. Wisconsin Admin. Code ch. Trans 115 interprets the provisions of 49 C.F.R. parts 383, *Commercial Driver’s License Standards; Requirements and Penalties*, and 384, *State Compliance with Commercial Driver’s License Program*, and Wis. Stat. ch 343, *Operator’s Licenses*, relating to CDL skills tests conducted by Third Party Testers and Examiners. Wisconsin Admin. Code ch. Trans 115 was last amended in 1996. Since that time, changes to federal regulations implementing the Commercial Motor Vehicle Safety Act of 1986 (“CMVSA”) have affected: (1) how Third Party Testers conduct skills tests; and (2) how WisDOT administers the Third Party testing program. These changes require WisDOT’s compliance by July 2015. The



anticipated amendments to Wis. Admin. Code ch. Trans 115 reflect these changes and will ensure WisDOT's compliance with federal law. The anticipated amendments to Wis. Admin. Code ch. Trans 115 will also ensure WisDOT's compliance with all changes in state law and improvements to business processes that have occurred since Wis. Admin. Code ch. Trans 115 was last updated. The anticipated modifications will not change the objective of the rule.

### **3. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

#### ***a. Existing state statutes and WisDOT policies that need to be updated in the rule:***

Wisconsin Stat. s. 343.16 (1) (b) authorizes WisDOT to contract with Third Party Testers to administer CDL skills tests. Changes to this section will be required to reflect new requirements in 49 C.F.R. parts 383 and 384.

#### ***b. New federal policies:***

Revisions to 49 C.F.R. parts 383 and 384 add requirements for the issuance of CDLs to Commercial Motor Vehicle operators. Revisions impact: (1) how Third Party Testers and Examiners must conduct CDL skills tests; and (2) clarify WisDOT's administration of the Third Party testing program. The Third Party Testing revisions will be located in Wis. Admin. Code ch. Trans 115.

#### ***c. WisDOT Division of Motor Vehicles ("DMV") policy changes:***

Since the last time Wis. Admin. Code ch. Trans 115 was updated, WisDOT DMV has improved certain business processes:

- WisDOT DMV prohibits Third Party Testers and Examiners from providing CDL applicants the exact copies of Third Party testing forms;
- WisDOT DMV requires removal of Social Security Numbers from Third Party Examiner Identification Certificates;
- WisDOT DMV refuses to train Third Party Examiners who have not submitted fee payment by the governing deadline; and
- WisDOT DMV imposes a governing deadline by which a Third Party Examiner must retake WisDOT sanctioned CDL training prior to the expiration of its certification.

#### ***d. Policy alternatives:***

The majority of all anticipated modifications to Wis. Admin. Code ch. Trans 115 are required to comply with federal and state laws. Accordingly, no policy alternatives exist.

### **4. Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

WisDOT is authorized to administer and modify Wis. Admin. Code ch. Trans 115 under various provisions of Wis. Stat. ch. 343 and Wis. Stat. s. 85.16 (1).

Wisconsin Stat. s. 85.16 (1) authorizes WisDOT's secretary to make reasonable and uniform orders and rules deemed necessary.

Wisconsin Stat. s. 343.02 requires that WisDOT administer and enforce the issuance of operator licenses and state identification cards and authorizes WisDOT to promulgate rules WisDOT's secretary considers necessary.

Wisconsin Stat. s. 343.03 (1) (a) and (b) requires that WisDOT institute a classified driver license system that meets all federal standards.

Wisconsin Stat. s. 343.16 (1) (a) requires that WisDOT conduct written and skills tests, and Wis. Stat. s. 343.16 (1) (b) authorizes WisDOT to contract with and use certain Third Party Testers and Examiners in conducting CDL Skills Tests.

### **5. Estimates of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule**

WisDOT currently estimates that modification to Wis. Admin. Code ch. Trans 115 will require approximately 500 hours of WisDOT staff time. Other resources necessary to develop the rule include: consultation and discussions with the general public, other impacted state and federal agencies, the Wisconsin Legislature, and the Governor's Office.

### **6. List with Description of all Entities that may be Affected by the Proposed Rule**

The following entities may be affected by the proposed rule:

- All persons who obtain CDL skills testing through a Third Party Tester;
- All Third Party Testers and Examiners that conduct CDL skills tests;
- Any state agency that employs Commercial Motor Vehicle operators or that conducts training or testing of applicants for CDL's.
- The United States Department of Transportation's Federal Motor Carrier Safety Administration, to the extent that it is authorized to review and determine whether WisDOT has complied with the CMVSA.

### **7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

Of import, 49 C.F.R. parts 383 and 384 establish minimum standards for the required tests, testing, standards, and monitoring of issuance of CDLs in accordance with the CMVSA. Unlike the applicable provisions of 49 C.F.R. parts 383 and 384, Wis. Admin. Code ch. Trans 115 does not currently:

- Assign the Federal Motor Carrier Safety Administration ("FMCSA") as the federal agency responsible for enforcing the FMCSRs;
- Identify information concerning who is eligible to conduct CDL tests for a driving school;
- Identify the conditions for which a Third Party Tester is granted testing authority;
- Identify the method that Third Party Testers must use to report CDL skills test results to the states;
- Identify the number of tests a Third Party Tester must administer each year to maintain their testing authority;
- Provide a timeframe in which a prospective Third Party Examiner must be free of felony convictions from the it applies for Third Party Examining authority;
- Identify the number of tests the Third Party Examiner must conduct each year to maintain their Third Party Examining authority;
- Identify the frequency with which WisDOT is required to conduct an onsite audit or inspection of a Third Party Tester;

- Identify the method WisDOT must use to determine the effectiveness of a Third Party testing program;
- Identify the type and amount of insurance a Third Party Tester must maintain to retain Third Party Tester authority;

**8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

At this time, WisDOT anticipates that updates to the existing Wis. Admin. Code ch. Trans 115, which are expected

to include modifications that reflect existing state and federal law, will have an indeterminate economic impact. Until the rule is actually drafted, determining the economic impact of the rule is difficult.

**9. Contact Person**

Jim Miller

Wisconsin Department of Transportation

Division of Motor Vehicles, Bureau of Field Services

(608) 266–2743



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## Rule–Making Notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

##### CR 14–051

(DATCP DOCKET # 14–R–06)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule revising Chapter ATPC 141, relating to the cherry marketing order.

#### Hearing Information

**Date:** Tuesday, September 30, 2014  
**Time:** 12:30 p.m. to 2:30 p.m.  
**Location:** Peninsular Agricultural Research Station  
4312 Highway 42 North  
Sturgeon Bay, WI 54235

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by September 16<sup>th</sup>, 2014, by writing to Stacie Ashby, Division of Agricultural Development, P.O. Box 8911, Madison, WI 53708–8911; or by emailing [stacie.ashby@wisconsin.gov](mailto:stacie.ashby@wisconsin.gov); or by telephone at (608) 224–5116. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

#### Appearances at the Hearing, Copies of Proposed Rule, and Submittal of Written Comments

DATCP will hold a public hearing at the time and place shown above. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **October 14<sup>th</sup>, 2014**, for additional written comments. Comments may be sent to the Division of Agricultural Development at the address below, or to [stacie.ashby@wisconsin.gov](mailto:stacie.ashby@wisconsin.gov), or to <http://adminrules.wisconsin.gov>.

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Development, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–5116 or by emailing [stacie.ashby@wisconsin.gov](mailto:stacie.ashby@wisconsin.gov). Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address above, or by email to [keeley.moll@wisconsin.gov](mailto:keeley.moll@wisconsin.gov), or by telephone at (608) 224–5039.

#### Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule changes the cherry marketing board from a 7 member board with two districts each represented by 3 board

members plus one at large member to a 5 member board with all members elected at large.

#### Statutory authority

Statutory authority: Sections 93.07 (1) and 96.15, Stats.

Statutes interpreted: Chapter 96, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) has general authority to adopt rules interpreting statutes under its jurisdiction under s. 93.07 (1), Stats. DATCP is specifically authorized to adopt rules under s. 96.15, Stats., to facilitate the administration and enforcement of ch. 96, Stats. (the Agricultural Marketing Act).

#### Related rules or statutes

Chapter ATPC 140 is the overarching rule applicable to each of the individual marketing orders. Chapters ATPC 141 through 148 are the marketing orders with ch. ATPC 141 being the marketing order for cherries.

#### Plain language analysis

##### Background

DATCP administers Wisconsin's agricultural marketing law which authorizes the creation of marketing orders for agricultural commodities. Each marketing order board collects assessments from producers of the applicable commodity. The assessments may be expended by the board for promotion, research or consumer education of the commodity. The provisions of ch. 96, Stats., and ch. ATPC 140 Wis. Adm. Code and the applicable marketing order (chs. ATPC 141 to 148) govern the organization of each of the seven marketing order boards, the election of marketing board members, the assessment of producers, and the use of assessments.

In recent years, the number of cherry growers has decreased so that currently there are 33 growers. The number of growers in each district has also changed. With the number of growers down to 33, it became difficult to consistently elect 7 members willing to serve on the Board. The Board requested the proposed amendment in order to have representation appropriate to the size of the industry. The Board also requested that the elections be at large rather than by district so that the representation would remain equitable regardless of changes to the location of producers.

In order to make any change to a marketing order, in addition to conducting the traditional rulemaking process, the change must be approved at a referendum of the producers of the affected commodity.

#### Rule content

This rule changes the cherry marketing board from a 7 member board with two districts each represented by 3 board members plus one at large member to a 5 member board with all members elected at large.

#### Summary of, and comparison with existing or proposed federal statutes and regulations

##### Federal programs

There is a federal marketing order for cherries under which assessments are collected in a manner similar to the state

cherry marketing order. The state and federal marketing orders are operated cooperatively to effectively use the assessments for the benefit of cranberry growers.

#### *Surrounding state programs*

There are very few cherry producers in the surrounding states and none of the surrounding states have a cherry marketing order.

#### *Data and analytical methodologies*

DATCP worked with representatives of the Wisconsin cherry industry to determine the changes proposed in this rule.

#### *Analysis and supporting documents used to determine effect on small business*

DATCP worked with representatives of the Wisconsin cherry industry determine the effect of the proposed rule on small businesses.

#### **Effect on Small Business**

This rule will have no negative economic impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections and thus free up more assessment monies for cherry promotion, research, and education benefiting cherry growers.

#### **Contact Person**

Stacie Ashby  
(608) 224–5116  
[stacie.ashby@wisconsin.gov](mailto:stacie.ashby@wisconsin.gov)

#### **Initial Regulatory Flexibility Analysis**

**Rule Subject:** Cherry Marketing Order

**Adm. Code Reference:** Chapter ATCP 141

#### **Rules Clearinghouse #: CR 14–051**

**DATCP Docket #: 14–R–06**

#### *Rule summary*

This rule changes the cherry marketing board from a 7 member board with two districts each represented by 3 board members plus one at large member to a 5 member board with all members elected at large.

#### *Small business affected*

This rule applies to cherry growers which are all small businesses. This rule will have no negative economic impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections and thus free up more assessment monies for cherry promotion, research and education benefiting cherry growers.

#### *Reporting, bookkeeping, and other procedures*

The rule creates no reporting, bookkeeping or other procedures for small businesses.

#### *Professional skills required*

The proposed rule does not require profession skill of small businesses.

#### *Accommodation for small business*

The rule has no negative impact upon small businesses and thus no accommodation is needed.

#### *Conclusion*

This rule will generally benefit affected businesses, including “small businesses.” This rule will not have any adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 141, Cherry Marketing Order		
Subject		
Marketing Order program for Cherries		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG–S		None
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units		<input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes    ☒ No

**Policy Problem Addressed by the Rule**

This rule changes the cherry marketing board from a 7 member board with two districts each represented by 3 board members plus one at large member to a 5 member board with all members elected at large.

DATCP administers Wisconsin's agricultural marketing law which authorizes the creation of marketing orders for agricultural commodities. Each marketing order board collects assessments from producers of the applicable commodity. The assessments may be expended by the board for promotion, research or consumer education of the commodity. The provisions of Ch. 96, Stats., and Ch. ATPC 140 Wis. Adm. Code and the applicable marketing order (Chs. ATPC 141 to 148) govern the organization of each of the seven marketing order boards, the election of marketing board members, the assessment of producers and the use of assessments.

In recent years, the number of cherry growers has decreased so that currently there are 33 growers. The number of growers in each district has also changed. With the number of growers down to 33, it became difficult to consistently elect 7 members willing to serve on the Board. The Board requested the proposed amendment in order to have representation appropriate to the size of the industry. The Board also requested that the elections be at large rather than by district so that the representation would remain equitable regardless of changes to the location of producers.

**Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)**

**Local Governments**

This rule will not impact local governments.

**Cherry Growers**

This rule will have no negative economic impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections and thus free up more assessment monies for cherry promotion, research and education benefiting cherry growers.

**Utility Rate Payers**

The rule will have no impact on utility rate payers.

**General Public**

This rule will have no effect on the general.

**Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule**

***Benefits***

This rule will benefit cherry growers by improving and making more equitable representation on the Cherry Marketing Board and by reducing the cost of cherry Board elections thereby freeing up more assessment monies for cherry promotion, research and education.

**General Public**

The general public will benefit from this rule as a result of continued growth of an important segment of the Wisconsin economy.

***Alternatives***

The alternative is to leave cherry board representation as is instead of making the representation that is more equitable and appropriate to the size of the industry.

**Long Range Implications of Implementing the Rule**

Long-term, implementing the rule will benefit business, the general public, and the Wisconsin economy as improved representation and lower cost elections will promote growth of the cherry industry in Wisconsin.

**Compare With Approaches Being Used by Federal Government**

There is a federal marketing order for cherries under which assessments are collected in a manner similar to the state cranberry marketing order. The state and federal marketing orders are operated cooperatively to effectively use the assessments for the benefit of cranberry growers.

**Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

There are very few cherry producers in the surrounding states and none of the surrounding states have a cranberry marketing order.

**Comments Received in Response to Web Posting and DATCP Response**

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.

**Notice of Hearings****Natural Resources*****Environmental Protection — General, Chs. NR 100—  
EmR1417***

(DNR # OE–10–14(E))

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on revisions to chapter NR 150 Wis. Admin. Code, relating to Emergency Board Order OE–10–14(E), related to the Department's environmental analysis procedures under the Environmental Policy Act. An emergency rule is needed to clarify the procedures for the review and analysis of new administrative rules in order to assure that the intent of the ch. NR 150 revision is being met and potential procedural questions do not invalidate the years of work and public engagement on new rules packages, and for additional housekeeping changes to ensure that the intent of the recent ch. NR 150 rewrite is being met, all in a manner that is consistent with past WEPA compliance approaches that have been upheld by the courts. Once the emergency rule is approved, a permanent rule will subsequently be required. The hearing will be held on the date(s) and at the time(s) and location(s) listed below.

**Hearing Information**

**Date:** Friday, September 26, 2014  
**Time:** 9:00 a.m.  
**Location:** State Natural Resources Building (GEF 2)  
 101 S. Webster Street, Room G09  
 Madison, WI 53707

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Jeff Schimpff, Wisconsin DNR, Madison, WI 53707; by E-mail to [jeff.schimpff@wisconsin.gov](mailto:jeff.schimpff@wisconsin.gov), or by calling (608) 267–7853. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

**Availability of the Proposed Rules and Fiscal Estimate**

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you

do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Jim Pardee (BETEA/7), Department of Natural Resources, Bureau of Energy, Analysis and Sustainability, 101 S. Webster St, Madison, WI, 53703, or by calling (608) 266–0426.

**Submitting Comments**

Comments on the proposed rule must be received on or before **October 13, 2014**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Jeff Schimpff (BEAS/7)

Department of Natural Resources

Bureau of Energy, Analysis and Sustainability

101 S Webster St, Madison, WI 53703

Phone: (608) 267–7853

Fax: (608) 264–6048

E-mail: [jeff.schimpff@wisconsin.gov](mailto:jeff.schimpff@wisconsin.gov)

Internet: Use the Administrative Rules System Web site accessible through the link provided

**Analysis Prepared by the Department of Natural Resources*****Finding/nature of emergency***

An emergency rule is needed to clarify the procedures for the review and analysis of new administrative rules in order to assure that the intent of the ch. NR 150 revision is being met and potential procedural questions do not invalidate the years of work and public engagement on new rules packages, and for additional housekeeping changes to ensure that the intent of the recent ch. NR 150 rewrite is being met, all in a manner that is consistent with past WEPA compliance approaches that have been upheld by the courts. Once the emergency rule is approved, a permanent rule will subsequently be required.

***Detailed description of the objective of the proposed rule***

The previous version of ch. NR 150 classified most administrative rules as “Type 3 actions”, a classification requiring some form of public notice and no additional environmental analysis as part of the formal rules process.

The Rule changes would be simple editorial changes to clarify that emergency rules are “minor actions requiring no additional environmental analysis, and that the process for developing permanent rules are “equivalent analysis actions” under the new ch. NR 150, similar to how they were treated under the old ch. NR 150.



These changes would more clearly outline the required review process for administrative rules. Additional changes to clarify publication requirements, WEPA compliance determinations for various permits and plan approvals and other housekeeping changes, consistent with the intent of the rule, as presented to the public and approved by the NRB, may also come to light as implementation of the new rule progresses.

***Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives***

The rule change would clarify what was intended and what was presented to the public through the Natural Resources Board process for development of the current ch. NR 150.

***Detailed explanation of statutory authority for the rule (including the statutory citation and language)***

The department is responsible for compliance with department rules and procedures pursuant to s. 1.11, and 227.11, Stats., provides rule authority

Pursuant to s. 227.24 (1) (a) Stats., the department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to ensure that the department and public time involved in lengthy rule processes for current rules is not compromised by a confusing definition in ch. NR 150.

***Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule***

48 hours.

***List with description of all entities that may be affected by the proposed rule***

It is anticipated that no entities shall be affected by the proposed rule. This clarifies internal procedures for rules development.

***Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule***

None.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA–2049 (R03/2012)

***Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses)***

None.

***Anticipated number, month, and locations of public hearings***

The Department anticipates holding one public hearing in the month of September 2014.

The Department will hold this hearing in Madison to seek public comment on the changes to the rule.

**Effect on Small Business**

This rule will have no effect on small business. The Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us), or by calling (608) 266–1959.

**Environmental Analysis**

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

**Fiscal Estimate Summary**

Because this is a housekeeping change affecting only internal DNR operations, no Fiscal Estimate will be prepared.

**Contact Person**

Jeff Schimpff (BEAS/7)  
Department of Natural Resources  
Phone: (608) 267–7853  
E–mail: [jeff.schimpff@wisconsin.gov](mailto:jeff.schimpff@wisconsin.gov)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707–7864  
FAX: (608) 267–0372

**ADMINISTRATIVE RULES  
Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis

☒ Original    ☐ Updated    ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 150– Environmental Analysis and Review Procedures for Department Actions

3. Subject

Implementation of Wisconsin Environmental Policy Act, s. 1.11, Wis. Stats.

4. Fund Sources Affected

☒ GPR    ☐ FED    ☐ PRO    ☐ PRS    ☒ SEG    ☐ SEG–S

5. Chapter 20, Stats. Appropriations Affected

None.



## 6. Fiscal Effect of Implementing the Rule

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs                      |
| <input type="checkbox"/> Indeterminate    | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency's Budget |
|   |   | <input checked="" type="checkbox"/> Decrease Cost            |

## 7. The Rule Will Impact the Following (Check All That Apply)

- |   |   |
|---|---|
| <input type="checkbox"/> State's Economy        | <input checked="" type="checkbox"/> Specific Businesses/Sectors               |
| <input type="checkbox"/> Local Government Units | <input checked="" type="checkbox"/> Public Utility Rate Payers                |
|   | <input type="checkbox"/> Small Businesses (if checked, complete Attachment A) |

## 8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

- ☐ Yes ☒ No

## 9. Policy Problem Addressed by the Rule

Chapter NR 150 was revised and went into effect April 1, 2014. An emergency rule is needed to clarify the procedures for the review and analysis of new administrative rules in order to assure that the intent of the ch. NR 150 revision is being met and potential procedural questions do not invalidate the years of work and public engagement on new rules packages, and for additional housekeeping changes to ensure that the intent of the recent ch. NR 150 rewrite is being met, all in a manner that is consistent with past WEPA compliance approaches that have been upheld by the courts.

The pre–2014 version of ch. NR 150 classified the promulgation of most administrative rules as “Type 3 actions”, a classification requiring some form of public notice and no additional environmental analysis as part of the formal rules process. The rule changes now being proposed would be simple changes to clarify that emergency rules are “minor actions”, requiring no additional environmental analysis, and that the process for developing permanent rules is an “equivalent analysis action” under the new ch. NR 150, similar to how they were treated under the old ch. NR 150.

In addition, the revision includes clarification changes regarding strategic analysis requirements, minor actions, and procedures for publishing determinations. Consistent with the intent of the previous version of ch. NR 150, the emergency rule clarifies that a strategic analysis is required for review of significant policies, but for other policies or issues the strategic analysis can be used as a discretionary tool. The list of minor actions, not requiring additional environmental analysis, has been expanded to include actions that originally were intended to be outlined in program guidance. The proposed revisions in the emergency rule would clarify in rule the list of activities.

## 10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Businesses that may be affected by this rule revision include mainly those that are required to apply for WDNR permits for projects that exhibit the potential to have “significant effects upon the quality of the human environment” (due to major air emissions, wastewater discharges, water withdrawals, etc.). However, ch. NR 150 is primarily an administrative process that applies internally to WDNR, so impacts to businesses are minimal. In addition, most environmental review data is also required under permit review procedures, so in general little to no additional cost is imposed by the environmental impact statement process.

## 11. Identify the local governmental units that participated in the development of this EIA.

None.

## 12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Not required for emergency rules. Wis. Stat. s. 227.137(5)

## 13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

DNR staff will have more clarity regarding the implementation of ch. NR 150 and regarding the required review process for promulgating administrative rules. DNR staff and the public will have more clarity regarding publication requirements and WEPA compliance determinations for various permits and plan approvals.

## 14. Long Range Implications of Implementing the Rule

No long range implications, since it is an emergency rule, and can only be in place for up to 270 days.

## 15. Compare With Approaches Being Used by Federal Government

This revised rule is similar to the existing rule, in that it substantially follows the guidelines of the federal Council on Environmental Quality as directed by s. 1.11, Wis. Stats.

## 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Neighboring states have significant differences in their related laws, so the opportunity to gain from their experience is limited. For example, Minnesota requires that counties also follow WEPA–like analysis procedures, whereas Wisconsin counties have no such requirements. Illinois’ law covers only actions conducted by the state itself, whereas in Wisconsin, WEPA applies to all actions, including actions permitted or regulated by the state.

17. Contact Name

David Siebert

18. Contact Phone Number

608–264–6048

This document can be made available in alternate formats to individuals with disabilities upon request.

**ATTACHMENT A**

## 1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

None.

## 2. Summary of the data sources used to measure the Rule’s impact on Small Businesses

None.

## 3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
- ☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☐ Consolidation or Simplification of Reporting Requirements
- ☐ Establishment of performance standards in lieu of Design or Operational Standards
- ☐ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

## 4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Not applicable.

## 5. Describe the Rule’s Enforcement Provisions

This rule carries no enforcement provisions. Disputes regarding the need to conduct an EIS analysis have judicial avenues of appeal.

## 6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No**Notice of Rulemaking without Hearing****Public Service Commission****CR 14–052**

(PSC DOCKET # 1–AC–246)

The Public Service Commission of Wisconsin proposes an order to amend section PSC 135.019 (1), regarding the adoption of federal pipeline safety regulations.

This rulemaking will be done without a hearing because, under s. 227.16 (2) (b), Stats., no hearing is required when an existing rule is being brought into conformity with a statute that has changed. However, written comments will be accepted.

**Written Comments**

Any person may submit written comments on these proposed rules. The record will be open for written comments from the public, effective immediately, and until **Tuesday, September 30, 2014, at noon**. All written comments must

include a reference on the filing to docket 1–AC–246. File by one mode only.

**Industry:** File comments using the Electronic Regulatory Filing system. This may be accessed from the commission’s web site (<http://psc.wi.gov>).

**Members of the Public:**

Please submit your comments in one of the following ways:

- **Electronic Comment.** Go to the commission’s web site at <http://psc.wi.gov>, and click on the “ERF – Electronic Regulatory Filing” graphic on the side menu bar. On the next page, click on “Need Help?” in the side menu bar for instructions on how to upload a document.
- **Web Comment.** Go to the commission’s web site at <http://psc.wi.gov>, click on the “Public Comments” button on the side menu bar. On the next page select the “File a comment” link that appears for docket number 1–AC–246.

- **Mail Comment.** All comments submitted by U.S. mail must include the phrase “Docket 1–AC–246 Comments” in the heading, and shall be addressed to:

Sandra J. Paske, Secretary to the Commission  
Public Service Commission  
P.O. Box 7854  
Madison, WI 53707–7854

The commission does not accept comments submitted via e-mail or facsimile (fax). Any material submitted to the commission is a public record and may appear on the commission’s web site. The commission may reject a comment that does not comply with the requirements described in this notice.

### Contact People

Questions regarding this matter should be directed to docket coordinator Thomas Stemrich, at (608) 266–2800 or [Tom.Stemrich@wisconsin.gov](mailto:Tom.Stemrich@wisconsin.gov). Small business questions should be directed to Christina Keeley at (608) 267–7915 or [Christina.Keeley@wisconsin.gov](mailto:Christina.Keeley@wisconsin.gov). Media questions should be directed to the Communications Director at (608) 266–9600. Hearing or speech impaired individuals may also use the commission’s TTY number, if calling from Wisconsin (800) 251–8345, if calling from outside Wisconsin (608) 267–1479.

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the docket coordinator, as indicated in the previous paragraph, as soon as possible.

### Analysis Prepared by the Public Service Commission of Wisconsin

#### *Statutory authority and explanation of authority*

This rule is authorized under ss. 196.02 (1) and (3), 196.745 (1) (a), and 227.11, Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.745 (1) (a), Stats., grants the commission specific authority to adopt rules requiring that the construction and operation of gas facilities be done in a reasonably adequate and safe manner.

#### *Statute interpreted*

This rule interprets s. 196.745, Stats., and, under a contract with the U.S. Department of Transportation, Office of Pipeline Safety, the federal pipeline safety regulations (49 CFR 190 to 199).

#### *Related statutes or rules*

The federal pipeline safety statutes may be found in 49 USC 60101 to 60133. The federal pipeline safety regulations may be found in 49 CFR 190 to 199. Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission enforces the federal pipeline safety regulations for Wisconsin’s natural gas pipeline operators, primarily public utilities. Under this agreement, the commission has the authority to make additions to the federal code that are more stringent than the federal standards.

Chapter PSC 134 is the rule that deals with gas service standards. That rule also has some requirements concerning safe interactions between pipeline operators and their customers.

#### *Brief summary of rule*

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR. Parts 192, 193, and 199. As part of the agreement, the commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The commission’s latest version of that rule adopts the federal code up to January 1, 2013. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the commission needs to amend its rule to include those federal regulation changes made since January 2013. Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.

#### *Comparison with existing or proposed federal legislation*

As this is the adoption of the federal regulations, it is the same as the federal regulations.

#### *Comparison with similar rules in surrounding states*

All states, including Michigan, Iowa, Illinois, and Minnesota, adopt the federal pipeline regulations.

#### *Effect on Small Business*

This rule will not affect small businesses. The s. 227.114(12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Since electric, gas, and water utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses. Further, the contract between the federal department of transportation and the commission requires that treatment be uniform across the state and across gas pipeline operators. As a result, the commission cannot make special provisions for small business.

#### *Comments*

Comments on this rule may be submitted as outlined in the Notice of Rulemaking without Hearing and Request for Comments.

#### *Accommodation*

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this rulemaking or who needs to obtain this document in a different format should contact the docket coordinator listed below.

#### *Agency Contact People*

Questions regarding this rule should be directed to docket coordinator Thomas Stemrich, at (608) 266–2800 or [Tom.Stemrich@wisconsin.gov](mailto:Tom.Stemrich@wisconsin.gov). Small business questions should be directed to Christina Keeley at (608) 267–7915 or [Christina.Keeley@wisconsin.gov](mailto:Christina.Keeley@wisconsin.gov). Media questions should be directed to the Communications Director, at (608) 266–9600. Hearing or speech-impaired individuals may also use the commission’s TTY number; if calling from Wisconsin, (800) 251–8345; if calling from outside Wisconsin (608) 267–1479.

**Initial Regulatory Flexibility Analysis**

This rulemaking has no effect on small businesses. The s. 227.114 (12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Since gas utilities are monopolies in their service territories, they are dominant in their field and, so, are not small businesses. Further, the contract between the federal department of transportation and the commission requires that treatment be uniform across the state and across gas pipeline operators. As a result, the commission cannot make special provisions for small business.

**Fiscal Estimate**

This rule will result in no fiscal impact since pipeline operators are already required, under federal law, to follow the federal regulations. Any economic impact of those federal

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R03/2012)

regulations has already occurred. This rulemaking just updates the state’s enforcement authority.

**Text of Proposed Rule**

SECTION 1. PSC 135.019 (1) is amended to read:

PSC 135.019 (1) The federal department of transportation, office of pipeline safety, pipeline safety standards, as adopted through January 1, 2013 the effective date of these rules ... [LRB to insert date]..., and incorporated in 49 CFR Parts 192, 193 and 199, including the appendices, are adopted as state pipeline safety standards and incorporated by reference into this chapter.

SECTION 2. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

**155 – PSC 135 – Pipeline Safety Regulations****1. Type of Estimate and Analysis**

☒ Original      ☐ Updated      ☐ Corrected

**2. Administrative Rule Chapter, Title and Number**

PSC 135, Gas Safety

**3. Subject**

Adoption of federal gas pipeline regulations

**4. Fund Sources Affected**

☐ GPR ☒ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

**5. Chapter 20, Stats. Appropriations Affected****6. Fiscal Effect of Implementing the Rule**

☒ No Fiscal Effect      ☐ Increase Existing Revenues      ☐ Increase Costs  
☐ Indeterminate      ☐ Decrease Existing Revenues      ☐ Could Absorb Within Agency’s Budget  
☐ Decrease Cost

**7. The Rule Will Impact the Following (Check All That Apply)**

☐ State’s Economy      ☐ Specific Businesses/Sectors  
☐ Local Government Units      ☐ Public Utility Rate Payers  
☐ Small Businesses (if checked, complete Attachment A)

**8. Would Implementation and Compliance Costs Be Greater Than \$20 million?**

☐ Yes ☒ No

**9. Policy Problem Addressed by the Rule**

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 C.F.R. Parts 192, 193, and 199. As part of the agreement, the commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The commission’s latest version of that rule adopts the federal code up to January 1, 2013. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the commission needs to amend its rule to include those federal rule changes made since January 2013. Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.



10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

All gas utilities, Wisconsin Utilities Association, Utility Workers' Association, and National Federation of Independent Businesses.

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule will result in no economic impact since pipeline operators are already required, under federal law, to follow the federal regulations. Any economic impact of those federal regulations has already occurred. This rulemaking just updates the state's enforcement authority.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area. Being in compliance increases the amount of federal money received by the state.

14. Long Range Implications of Implementing the Rule

The only long-range implication is that the state's enforcement authority will be updated.

15. Compare With Approaches Being Used by Federal Government

As this is the adoption of the federal regulations, it is the same approach as the federal government.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All states, including the neighboring states, adopt the federal pipeline regulations.

17. Contact Name  
Lisa Farrell

18. Contact Phone Number  
06/13/2014

## ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

N/A

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
- ☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☐ Consolidation or Simplification of Reporting Requirements
- ☐ Establishment of performance standards in lieu of Design or Operational Standards
- ☐ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

N/A

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No

## Notice of Hearings

### Public Service Commission CR 14–053

(PSC DOCKET # 1–AC–244)

The Public Service Commission of Wisconsin proposes an order to repeal sections PSC 112.05 (3) (a) 1. to 3. and 118.03 (2) (b); renumber section PSC 133.03 (1) (e) 1. to 3.; to renumber and amend sections PSC 118.09 (1), 133.03 (1) (e) and 184.03 (3); to amend sections PSC 112.05 (3) (a) (intro.) and (b), 118.02 (17), 118.03 (1) (intro.), (2) (intro.), (4) (b), and (5), and 118.04 (1); to create PSC sections 112.05 (3) (c) and (c) (note), 118.09 (1), 133.03 (1) (e) 2., 3., and 3. (note), and 184.03 (3) (b), (c), and (c) (note), regarding obtaining a certificate or approval prior to beginning a proposed utility project, and displacement facility requirements and the displacement percentage that apply in renewable energy situations.

#### Hearing Information

**Date:** Tuesday, September 30, 2014  
**Time:** 10:00 a.m.  
**Location:** Amnicon Falls Hearing Room  
 1st Floor  
 Public Service Commission  
 610 North Whitney Way  
 Madison, Wisconsin

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the docket coordinator Andrew Kell, at (608) 266–1124 or [Andrew.Kell@wisconsin.gov](mailto:Andrew.Kell@wisconsin.gov) as soon as possible.

#### Appearances at the hearing and Submittal of Written Comments

Pursuant to s. 227.16 (2) (b), Stats., the commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Tuesday, September 30, 2014, at 10:00 a.m.. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

Any person may submit written comments on these proposed rules. The record will be open for written comments from the public, effective immediately, and until **Tuesday, October 14, 2014, at 12:00 noon**. All written comments must include a reference on the filing to docket 1–AC–244. File by one mode only.

**Industry:** File comments using the Electronic Regulatory Filing system. This may be accessed from the commission’s web site (<http://psc.wi.gov>).

#### **Members of the Public:**

Please submit your comments in one of the following ways:

- **Electronic Comment.** Go to the commission’s web site at <http://psc.wi.gov>, and click on the “ERF – Electronic Regulatory Filing” graphic on the side menu bar. On the next page, click on “Need Help?” in the side menu bar for instructions on how to upload a document.

- **Web Comment.** Go to the commission’s web site at <http://psc.wi.gov>, click on the “Public Comments” button on the side menu bar. On the next page select the “File a comment” link that appears for docket number 1–AC–244.

- **Mail Comment.** All comments submitted by U.S. mail must include the phrase “Docket 1–AC–244 Comments” in the heading, and shall be addressed to:

Sandra J. Paske, Secretary to the Commission  
 Public Service Commission  
 P.O. Box 7854  
 Madison, WI 53707–7854

The commission does not accept comments submitted via e-mail or facsimile (fax). Any material submitted to the commission is a public record and may appear on the commission’s web site. The commission may reject a comment that does not comply with the requirements described in this notice.

#### Contact People

Questions regarding this matter should be directed to docket coordinator Andrew Kell, at (608) 266–1124 or [Andrew.Kell@wisconsin.gov](mailto:Andrew.Kell@wisconsin.gov). Small business questions should be directed to Christina Keeley at (608) 267–7915 or [Christina.Keeley@wisconsin.gov](mailto:Christina.Keeley@wisconsin.gov). Media questions should be directed to the Communications Director at (608) 266–9600. Hearing or speech impaired individuals may also use the commission’s TTY number, if calling from Wisconsin (800) 251–8345, if calling from outside Wisconsin (608) 267–1479.

#### Analysis Prepared by the Public Service Commission of Wisconsin

##### *Statutory authority and explanation of authority*

This rulemaking is authorized under ss. 196.02 (1) and (3), 196.378, 196.49 (3), and 227.11 (2), Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.378, Stats., authorizes the Commission to promulgate a variety of rules concerning renewable energy credits. Section 196.49 (3), Stats., authorizes the Commission to promulgate rules about granting certificates.

##### *Statute interpreted*

This rule interprets ss. 196.378 and 196.49, Stats.

##### *Related statutes or rules*

None.

##### *Brief summary of rule*

The purpose of the rulemaking is to amend chs. PSC 112, 133, and 184 of the Wisconsin Administrative Code relating to the requirement to obtain a certificate or approval prior to beginning a proposed project, to conform with the statutory changes in s. 196.49 (5g), Stats., made by 2011 Wisconsin Act 155. This is accomplished by referencing where the revised cost thresholds for certification or approval may be found.

Furthermore, this rulemaking amends ch. PSC 118, relating to displacement facilities, to conform with the statutory changes made in s. 196.378 (3) (a) 1m., Stats., by 2013 Wisconsin Act 300. This is accomplished in the following ways: (1) strike the requirement that a displacement facility be placed in service on or after June 3,

2010, to be consistent with the statute; and (2) revise the reference to “in the entire area served by the Midcontinent Independent System Operator” as a basis for the displacement percentage to streamline the process for determining the displacement percentage.

#### ***Comparison with existing or proposed federal legislation***

The commission is not aware of any existing or proposed federal legislation concerning the matters addressed in this rulemaking.

#### ***Comparison with similar rules in surrounding states***

The commission is not aware of any surrounding states that limit what facilities may be used to recreate renewable energy credits by the date on which the facilities went into service. The commission is not aware of any surrounding states that determine whether certification or approval is necessary by the cost of the project.

#### **Effect on Small Business**

This rule will not affect small businesses. The s. 227.114 (12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Since electric, gas, and water utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses.

#### **Comments**

Comments on this rule may be submitted as outlined in the Notice of Hearing.

#### **Accommodation**

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed below.

#### **Agency Contact People**

Questions regarding this rule should be directed to docket coordinator Andrew Kell, at (608) 266–1124 or [Andrew.Kell@wisconsin.gov](mailto:Andrew.Kell@wisconsin.gov). Small business questions should be directed to Christina Keeley at (608) 267–7915 or [Christina.Keeley@wisconsin.gov](mailto:Christina.Keeley@wisconsin.gov). Media questions should be directed to the Communications Director at (608) 266–9600. Hearing or speech-impaired individuals may also use the commission’s TTY number; if calling from Wisconsin, (800) 251–8345; if calling from outside Wisconsin (608) 267–1479.

#### **Initial Regulatory Flexibility Analysis**

This rule will not affect small businesses. The s. 227.114 (12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Since gas, electric, and water utilities are monopolies in their service territories, they are dominant in their fields, and so, are not small businesses.

#### **Fiscal Estimate**

This rulemaking should have either no or minimal economic impact.

#### **Wisconsin Environmental Policy Act**

This is a Type III action under Wis. Admin. Code s. PSC 4.10 (3). The Commission will review the potential

environmental effects of the project. Type III actions normally do not require the preparation of an environmental impact statement under Wis. Stat. s. 1.11 or an environmental Assessment.

#### **Text of Proposed Rule**

**SECTION 1.** PSC 112.05 (3) (a) (intro.) is amended to read:

**PSC 112.05 (3) (a) (intro.)** Cost thresholds for projects requiring commission review and approval under this section are as follows: those established under par. (b).

**SECTION 2.** PSC 112.05 (3) (a) 1. to 3. are repealed.

**SECTION 3.** PSC 112.05 (3) (b) is amended to read:

**PSC 112.05 (3) (b)** Beginning ~~in calendar year 2000, and on May 1 on May 1, 2014, and on May 1~~ of each successive even-numbered year thereafter, the commission shall adjust the ~~estimated gross cost thresholds in par. (a) s. 196.49 (5g) (a), Stats., to account for inflation in reflect changes to the cost of electric utility construction. The adjustment shall be based on the cost index numbers published in the “Handy–Whitman Index of Public Utility Construction Costs, Cost Trends of Electric Utility Construction – North Central Region for Total Transmission Plant” (Handy–Whitman Index). The commission shall make the adjustment calculation by multiplying each gross cost threshold in par. (a) by the ratio of the Handy Whitman Index number on January 1 of the most recent even-numbered year (numerator) to the Handy Whitman Index number on January 1, 1998 (denominator). The commission shall notify all electric utilities of the resulting adjusted cost limits by May 15 of each even-numbered year. If the referenced Handy–Whitman Index is no longer available, an equivalent successor index may be used which is generally recognized by the electric industry and acceptable to the commission.~~

**SECTION 4.** PSC 112.05 (3) (c) and (c) note are created to read:

**PSC 112.05 (3) (c)** The commission shall notify all electric utilities of the resulting adjusted cost limits by May 15 of each even-numbered year and shall publicize the adjusted cost limits on the commission’s website. If the Handy–Whitman Index is no longer available, an equivalent successor index may be used which is generally recognized by the electric industry and acceptable to the commission.

**Note:** The commission maintains or has access to the Handy–Whitman Index of Public Utility Construction Costs and this reference or a copy may be reviewed by contacting the commission’s offices.

**SECTION 5.** PSC 118.02 (17) is amended to read:

**PSC 118.02 (17)** “Tracking system account” means the account that the program administrator maintains in order to track the creation, sale, transfer, purchase, and retirement of a renewable energy certificate or a an RRC by a renewable energy tracking system participant.

**SECTION 6.** PSC 118.03 (1) (intro.) and 118.03 (2) (intro.) are amended to read:

**PSC 118.03 (1) (intro.)** An electric provider may use the output of a renewable facility to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or to create a an RRC for renewable energy only if the renewable facility that is the source of the electric provider’s renewable energy meets all of the following requirements:

**PSC 118.03 (2) (intro.)** An electric provider or customer or member of an electric provider may create a an RRC for conventional electricity displaced by the use of a

displacement facility only if the displacement facility meets all of the following requirements:

**SECTION 7.** PSC 118.03 (2) (b) is repealed.

**SECTION 8.** PSC 118.03 (4) (b) (intro.) and 118.03 (5) are amended to read:

**PSC 118.03 (4) (b) (intro.)** An electric provider may use the production of a facility that satisfies par. (a) to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or to create a an RRC if the electric provider demonstrates all of the following:

**PSC 118.03 (5)** A customer or member of an electric provider may create a an RRC in the manner described in sub. (4).

**SECTION 9.** PSC 118.04 (1) is amended to read:

**PSC 118.04 (1)** A renewable energy certificate or a an RRC is used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., in the compliance period for which the electric provider retires the renewable energy certificate or RRC, regardless of the date on which the renewable energy certificate or RRC is retired in the renewable energy tracking system.

**SECTION 10.** PSC 118.09 (1) is renumbered 118.09 (1m) and amended to read:

**PSC 118.09 (1m)** For each calendar year, the commission shall, ~~by order,~~ determine the percentage of electricity from conventional resources for the entire state for purposes of calculating the amount of ~~a RRC~~ RRCs to be created for displaced conventional electricity. The commission shall base this determination on the ~~annual average mix of resources used to generate electricity in the entire area served by the Midcontinent Independent System Operator~~ equation of 100% minus the total statewide renewable energy percentage, as calculated using renewable energy information submitted to the commission by electric providers in their most recent renewable portfolio standard compliance reports. The commission may, by order, also establish a different percentage for a specific type of displacement facility if its seasonal or daily operating characteristics justify a percentage that differs from the annual average percentage.

**SECTION 11.** PSC 118.09 (1) is created to read:

**PSC 118.09 Calculation of displaced conventional electricity. (1)** For purposes of this section, "Total statewide renewable energy percentage" means the percentage that results from the following calculation:

(a) The actual renewable generation that serves Wisconsin retail customers within a given year as part of any of the following:

1. Wisconsin electric provider renewable portfolio standard requirements.
2. Any other federal or state renewable energy requirements that apply to Wisconsin electric providers.
3. Wisconsin electric provider voluntary renewable energy programs.

(b) Divided by the total sales of electricity to Wisconsin retail customers in that same year.

**SECTION 12.** PSC 133.03 (1) (e) is renumbered 133.03 (1) (e) 1. and amended to read:

**PSC 133.03 (1) (e) 1.** A single gas pipeline project and associated plant, or any plant or addition to plant the cost of

which exceeds \$1,500,000 ~~or 4% of the utility's gross gas operating revenue received during the previous calendar year, whichever is less~~ the cost threshold established under subd. 2., except for any of the following:

**SECTION 13.** PSC 133.03 (1) (e) 1. to 3. are renumbered 133.03 (1) (a) to (c).

**SECTION 14.** PSC 133.03 (1) (e) 2., 3. and 3. (note) are created to read:

**PSC 133.03 (1) (e) 2.** Beginning on May 1, 2014, and on May 1 of each successive even-numbered year thereafter, the commission shall adjust the cost thresholds in s. 196.49 (5g) (a), Stats., to reflect changes to the cost of gas utility construction based on the applicable industry cost index numbers published in the "Handy–Whitman Index of Public Utility Construction Costs."

3. The commission shall notify all gas utilities of the resulting adjusted cost limits by May 15 of each even-numbered year and shall publicize the adjusted cost limits on the commission's website. If the Handy–Whitman Index is no longer available, an equivalent successor index may be used which is generally recognized by the gas industry and acceptable to the commission.

**Note:** The commission maintains or has access to the Handy–Whitman Index of Public Utility Construction Costs and this reference or a copy may be reviewed by contacting the commission's offices.

**SECTION 15.** PSC 184.03 (3) is renumbered 184.03 (a) and amended to read:

**PSC 184.03 (3) CONSTRUCTION OF FACILITIES.** (a) A utility shall obtain a certificate from the commission before constructing, purchasing, installing, modifying, replacing, or placing in operation any plant not exempt under sub. (4) if the project cost exceeds \$250,000 ~~or 25 percent of the utility's gross water or sewer operating revenue received during the previous calendar year, whichever is less, or exceeds the cost threshold established under s. 196.49 (5g) (b), Stats.~~ the cost threshold established under par. (b).

**SECTION 16.** PSC 184.03 (3) (b), (c) and (c) (note) are created to read:

**PSC 184.03 (3) (b)** Beginning on May 1, 2014, and on May 1 of each successive even-numbered year thereafter, the commission shall adjust the cost thresholds in s. 196.49 (5g) (a), Stats., to reflect changes to the cost of water utility construction based on the applicable industry cost index numbers published in the "Handy–Whitman Index of Public Utility Construction Costs."

(c) The commission shall notify all water utilities of the resulting adjusted cost limits by May 15 of each even-numbered year and shall publicize the adjusted cost limits on the commission's website. If the Handy–Whitman Index is no longer available, an equivalent successor index may be used which is generally recognized by the water industry and acceptable to the commission.

**Note:** The commission maintains or has access to the Handy–Whitman Index of Public Utility Construction Costs and this reference or a copy may be reviewed by contacting the commission's offices.

**SECTION 17.** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.



STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707–7864  
FAX: (608) 267–0372

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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#### 1. Type of Estimate and Analysis

☒ Original      ☐ Updated      ☐ Corrected

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#### 2. Administrative Rule Chapter, Title and Number

Chapters PSC 112, PSC 118, PSC 133, and PSC 184

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#### 3. Subject

This rulemaking addresses two different areas: cost thresholds for needing to obtain a certificate or approval prior to beginning a proposed project, and displacement facilities. The cost thresholds will be updated, the requirement that a displacement facility be placed in service on or after June 3, 2010 will be stricken and the reference to the Midcontinent Independent System Operator as a basis for the displacement percentage will be revised to streamline the process for determining the displacement percentage

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#### 4. Fund Sources Affected

☐ GPR   ☐ FED   ☐ PRO   ☐ PRS   ☐ SEG   ☐ SEG–S

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#### 5. Chapter 20, Stats. Appropriations Affected

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#### 6. Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect      ☐ Increase Existing Revenues      ☐ Increase Costs  
☐ Indeterminate      ☐ Decrease Existing Revenues      ☐ Could Absorb Within Agency's Budget  
☐ Decrease Cost

---

#### 7. The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy      ☐ Specific Businesses/Sectors  
☐ Local Government Units      ☐ Public Utility Rate Payers  
☐ Small Businesses (if checked, complete Attachment A)

---

#### 8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes    ☒ No

---

#### 9. Policy Problem Addressed by the Rule

The rule making amends relevant sections of chs. PSC 112, PSC 133, and PSC 184 to conform with 2011 Wisconsin Act 155, and amends relevant sections of PSC 118 to conform with 2013 Wisconsin Act 300. Finally, getting data from the Midcontinent Independent System Operator has turned out to be time-consuming and less detailed than necessary.

---

#### 10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

All electric, gas and water utilities, Citizens' Utility Board, League of Wisconsin Municipalities, , Wisconsin Industrial Energy Group, Municipal Electric Utilities of Wisconsin, Wisconsin Towns Association, Wisconsin Counties Association, Wisconsin Utilities Association, Wisconsin Paper Council, Clean Wisconsin, RENEW Wisconsin.

11. Identify the local governmental units that participated in the development of this EIA.

League of Wisconsin Municipalities, Municipal Electric Utilities of Wisconsin, Wisconsin Towns Association, Wisconsin Counties Association.

---

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

None or minimal. Any economic impact occurred when the statutes were passed. This rulemaking just brings the rules into compliance.

---

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This will bring the rules into conformity with the statutes and will streamline the process for determining the percentage of electricity from conventional resources that has been displaced by renewable energy. This percentage is used to calculate the amount of renewable resource credits that may be created.

---

14. Long Range Implications of Implementing the Rule

Keeps the rules in conformity with the statutes. Less confusion. Faster determination of the displacement percentage used in renewable energy credit matters.

---

15. Compare With Approaches Being Used by Federal Government

The federal government does not have a similar program.

---

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The commission is not aware of any surrounding states that limit what facilities may be used to recreate renewable energy credits by the date on which the facilities went into service or of any surrounding states that determine whether certification or approval is necessary by the cost of the project.

---

17. Contact Name

Lisa Farrell

---

18. Contact Phone Number

608–267–9086

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This document can be made available in alternate formats to individuals with disabilities upon request.

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## Submittal of Proposed Rules to Legislative Council Clearinghouse

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*Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.*

### **Agriculture, Trade and Consumer Protection CR 14–051**

(DATCP DOCKET # 14–R–06)

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

**SUBJECT:** Cherry marketing order

**ADM. CODE REFERENCE:** Chapter ATPC 141

#### **Scope**

The scope statement for this rule, SS 035–14, was approved by the Governor on April 3, 2014, published in Register No. 700 on May 1, 2014, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on May 14, 2014.

#### **Agency Procedure for Promulgation**

The department will hold a public hearing on this rule on September 30, 2014.

#### **Contact person**

The department's Division of Agricultural Development is primarily responsible for this rule.

If you have questions, you may contact Stacie Ashby at (608) 224–5116.

### **Public Service Commission CR 14–052**

(PSC DOCKET # 1–AC–246)

Pursuant to s. 227.14 (4m), Stats., on August 29, 2014, the Public Service Commission of Wisconsin submitted a proposed rule to the Legislative Council Staff (Rules Clearinghouse) for review. The proposed rule, Commission docket 1–AC–246, deals with adopting updated federal regulations regarding natural gas pipeline safety.

#### **Analysis**

The Public Service Commission of Wisconsin proposes an order to amend section PSC 135.019 (1), regarding the adoption of federal pipeline safety regulations.

#### **Scope**

The Statement of Scope for this rule, SS 042–14, was approved by the Governor on April 30, 2014, published in Register No. 701 on May 14, 2014, and approved by the Commission on May 30, 2014.

### **Agency Procedure for Promulgation**

This rulemaking will be done without a hearing because, under s. 227.16 (2) (b), Stats., no hearing is required when an existing rule is being brought into conformity with a statute that has changed. However, written comments will be accepted.

#### **Contact Person**

The Division of Gas and Energy of the Commission is the organizational unit responsible for the promulgation of the rule.

The contact person is Thomas Stemrich, at (608) 266–2800 or [Tom.Stemrich@wisconsin.gov](mailto:Tom.Stemrich@wisconsin.gov).

### **Public Service Commission CR 14–053**

(PSC DOCKET # 1–AC–244)

Pursuant to s. 227.14 (4m), Stats., on August 29, 2014, the Public Service Commission of Wisconsin submitted a proposed rule to the Legislative Council Staff (Rules Clearinghouse) for review.

#### **Analysis**

The proposed rule amends relevant sections of chs. PSC 112, 133, and 184 to conform with 2011 Wisconsin Act 155, and amends relevant sections of ch. PSC 118 to conform with 2014 Wisconsin Act 300.

The proposed rule, Commission docket 1–AC–244, deals with obtaining a certificate or approval prior to beginning a proposed utility project, and displacement facility requirements and displacement percentage used in renewable energy credit matters.

#### **Scope**

The statement of scope for this rule, SS 052–14, was approved by the Governor on May 15, 2014, published in Register No. 702 on June 14, 2014, and approved by the Commission on July 2, 2014.

#### **Agency Procedure for Promulgation**

A public hearing is necessary and will be held on Tuesday, September 30, 2014, at 10:00 a.m., at the Public Service Commission building at 610 North Whitney Way, Madison, Wisconsin.

#### **Contact Person**

The Division of Regional Energy Markets of the Commission is the organizational unit responsible for the promulgation of the rule.

The contact person is Andrew Kell, at (608) 266–1124 or [Andrew.Kell@wisconsin.gov](mailto:Andrew.Kell@wisconsin.gov).

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## Submittal of Proposed Rules to Legislature

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*Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.*

### **Natural Resources**

*Fish, Game, etc., Chs. NR 1—*

*Environmental Protection — General, Chs. NR 100—*

*Environmental Protection — WPDES, Chs. NR 200—*

*Environmental Protection — Water Regulation,  
Chs. NR 300—*

*Environmental Protection — Air Pollution Control,  
Chs. NR 400—*

*Environmental Protection—Solid Waste, Chs. NR 500—*

*Environmental Protection — Investigation and  
Remediation of Environmental Contamination,  
Chs. NR 700—*

*Environmental Protection—Water Supply, Chs. NR 800—  
CR 13–057*

(DNR # WA–14–13)

On August 25, 2014, the Department of Natural Resources submitted a proposed rule in final draft form to the chief clerk

of the Senate and Assembly pursuant to s. 227.19 (2), Stats. The rule revises amendments to regulations to comply with the ferrous mining rule affecting chapters NR 103, 123, 130, 131, 132, 135, 140, 182, 213, 214, 350, 406, 500, 502, 503, 504, 506, 507, 508, 509, 510, 512, 514, 516, 518, 520, 524, 526, 528, 538, 700, 812, and 815, Wisconsin Administrative Code, as required by Section 103 of 2013 Wisconsin Act 1.

This rule was approved by the Governor on July 1, 2014, pursuant to s. 227.185, Stats.



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